26522

(17,771.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 287.

R. A. WILLIAMS, PLAINTIFF IN ERROR,

vs.

EDGAR FEARS, SHERIFF, AND R. B. AYCOCK, JAILER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 23, 1900.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between R. A. Williams, plaintiff, and Edgar Fears *et al.*, defendants, said case being a writ of *habeas corpus*, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Con-
2 stitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said R. A. Williams, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal U. S. Circuit Court, N. D. Georgia.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of May, in the year of our Lord one thousand nine hundred.

O. C. FULLER,
Clerk of the Circuit Court of the United States for the Northern Dist. of Georgia.

Allowed by—
T. J. SIMMONS,
Chief Justice of the Supreme Court of the State of Georgia.

Filed in office May 18, 1900.
Z. D. HARRISON,
C. S. C., Ga.

3 UNITED STATES OF AMERICA, *ss:*

To Edgar Fears, sheriff, and R. B. Aycock, jailer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Georgia, wherein R. A. Williams is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thos. J. Simmons, chief justice of the supreme court of Georgia, this the 15th day of May, in the year of our Lord one thousand nine hundred.

T. J. SIMMONS,
Chief Justice of the Supreme Court of Georgia.

4 On this 17th day of May, in the year of our Lord one thousand nine hundred, personally appeared George P. Martin before me, the subscriber, J. C. Barton, a notary public, *ex officio* justice of the peace in & for Morgan county, Georgia, and makes oath that he delivered a true copy of the within citation to Edgar Fears, sheriff, and R. B. Aycock, jailer, and served E. W. Butler, county solicitor of Morgan county court, with a copy of the same by leaving it at the residence of said E. W. Butler.

GEO. P. MARTIN, *L. C.*

Sworn to and subscribed the 17th day of May, A. D. 1900.

J. C. BARTON,
N. P. & ex Off. J. P.

Filed in office May 18, 1900.

Z. D. HARRISON,
C. S. C., Ga.

Due & legal service of the within is hereby acknowledged and copy of same waived.

This May 18th, 1900.

J. M. TERRELL,
Att'y Gen'l of Georgia.
H. G. LEWIS,
Sol. Gen'l, Ocmulgee Circuit.

5 In the Supreme Court of the State of Georgia.

R. A. WILLIAMS
v.
EDGAR FEARS, Sheriff, *et al.* } *Habeas Corpus.*

Petition for Writ of Error.

To the Honorable Thomas J. Simmons, chief justice of the supreme court of the State of Georgia:

Your petitioner, R. A. Williams, respectfully shows:

That on the 11th day of April, A. D. 1900, the supreme court of

the State of Georgia entered a judgment in a case in which your petitioner was appellant and Edgar Fears, sheriff, and R. B. Aycock, jailer, were appellees.

That said supreme court of the State of Georgia is the highest court of the State of Georgia in which a decision in said suit could be had, and that said judgment so rendered was against your petitioner, and was a final judgment in said cause.

That in said judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of your petitioner, all of which will more in detail appear from the assignment of errors which is filed with this petition.

That said cause and the judgment of the supreme court of the State of Georgia drew in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question

6 the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission.

That your petitioner desires to have said judgment of the supreme court of Georgia reviewed and the questions therein raised passed upon by the Supreme Court of the United States.

Wherefore your petitioner prays the granting of a writ of error directing the clerk of the supreme court of Georgia to certify and send up the record in said case to the Supreme Court of the United States within thirty days from this date, that, the record and proceedings being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Greensboro, Ga.

JAS. DAVISON,
Attorney for Petitioner.

The foregoing petition considered, ordered that the writ be allowed upon the applicant, R. A. Williams, giving bond in the sum of one hundred dollars, conditioned to prosecute the same and pay the costs thereof, and upon his otherwise complying with the law

7 in such cases provided the clerk of the supreme court of Georgia is hereby required to make out a transcript of the record and transmit the same, under the seal of this court, to the Supreme Court, at Washington, within thirty days from this date, for such further action as may be proper in the premises.

Ordered, further, that this writ of error shall operate as a super-

sedeas until the final hearing is had in the Supreme Court of the United States.

This the 15 day of May, A. D. 1900.

T. J. SIMMONS,
Chief Justice Supreme Court of Georgia.

Filed in office May 18, 1900.

Z. D. HARRISON, *C. S. C., Ga.*

8 Know all men by these presents that we, R. A. Williams, as principal, and —— ——, as sureties, are held and firmly bound unto Edgar Fears *et al.*, for the use of the officers of the United States Supreme Court, in the full and just sum of one hundred dollars, or such other sum as may be required for costs, to be paid to the said Edgar Fears *et al.*, for the use of the said officers, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of May, in the year of our Lord one thousand nine hundred.

Whereas lately, at a hearing in a suit depending in said court between R. A. Williams, plaintiff in *habeas corpus*, and Edgar Fears *et al.*, defendants in *habeas corpus*, a judgment was rendered against the said R. A. Williams by the supreme court of Georgia, from which judgment appeal is hereby entered to the Supreme Court of the United States, and the said R. A. Williams having obtained writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Edgar Fears *et al*, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said R. A. Williams shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

R. A. WILLIAMS. [SEAL.]
R. DILLON. [SEAL.]

Sealed and delivered in presence of—

W. B. WEISIGER,
D. C. U. S. Cir. Ct., W. D. T.

Approved by—

T. J. SIMMONS,
Chief Justice Supreme Court of Ga.

9 STATE OF TENNESSEE, }
Shelby County. }

I do hereby certify that R. Dillon, the security on the enclosed bond, is worth $100 *dollars* over and above all liabilities, and that he is ample and solvent as security.

Witness my hand and seal this May 9th, 1900.

{Seal of the Circuit Court of the United States for the District of West Tennessee.}

W. B. WEISIGER,
D. C. U. S. Cir. Ct., W. D. T.

Filed in office May 18, 1900.
Z. D. HARRISON,
C. S. C., Ga.

10 In the Supreme Court of the State of Georgia.

R. A. WILLIAMS
v.
EDGAR FEARS, Sheriff, *et al.* } *Habeas Corpus.*

Assignments of Error.

The appellant, R. A. Williams, brings error from the judgment of the supreme court of Georgia affirming the judgment of the judge of the superior court, and, specifically excepting to the same, makes the following assignments of error thereon:

1. Said judgment is contrary to the law.

2. Said judgment is contrary to evidence.

3. Said judgment of affirmance declares that "(1) the term 'emigrant agent' means a person engaged in hiring laborers in this State to be employed beyond the limits of the same." Said judgment is contrary to and in conflict with article 1, section 8, paragraph 3, and article 1, section 9, paragraph 5, of the Constitution of the United States, the following words of said judgment being specifically assigned as error therefor: "The imposition of a tax upon such a person is not a regulation of interstate commerce"—that is to say, the imposition of a tax upon "a person engaged in hiring laborers in this State to be employed beyond the limits of the same" is not a regulation of interstate commerce. Appellant expressly contends that such a tax is a regulatian of interstate commerce.

4. Said judgment is contrary to and in conflict with the
11 fourteenth amendment to the Constitution of the United States, because the law declared valid by said judgment is an indirect effort to restrict the right of the citizen to move from one State to another and abridges the privileges and immunities of the citizen.

(*a*.) Said judgment is further assigned as error and as being in conflict with the fourteenth amendment to the Constitution of the United States, (1) because it impairs the natural right of the laborer

to labor; (2) because it is a tax on the laborer and is class legislation, aimed entirely at laborers, and (3) because it applies only to a class of laborers, to wit, those laborers who seek labor beyond the State.

(*b.*) Said judgment is further assigned as error, and is charged as being in conflict with the fourteenth amendment to the Constitution of the United States, because the law under review imposes a tax which is prohibitory in amount (to wit, $500.00) on the person who hires a laborer to work beyond the State and exempts the person who hires a laborer to work within the State. The business being hiring for employment, the situs of the employment does not constitute a difference which separates the two into distinct classes, so as to make lawful the taxing of one and the exemption from taxation of the other.

The words of the supreme court of Georgia used in said judgment of affirmance and specially assigned as error above are as follows:

"3. A law imposing a tax upon such a person is not such a restriction upon the right of a citizen to move from one State to
12 another as that it abridges the privileges or immunities of citizens of the United States within the meaning of the fourteenth amendment to the Constitution of the United States; nor is such a law a discrimination in favor of persons hiring laborers to be employed within the limits of the State as to amount to a denial of the equal protection of the laws within the meaning of that amendment."

5. Said judgment is contrary to and in conflict with article 4, section 2, of the Constitution of the United States, because the law imposing the tax in question was intended to and does prevent the non-resident employer from obtaining labor in Georgia, because it discriminates against the non-resident and in favor of the resident and imposes a burden on the employer without the State, thereby giving the citizen of Georgia an unfair advantage over the non-resident. It is a plain denial to the non-resident of the equal protection of the law, in that it taxes the efforts of the non-resident citizen to obtain labor in Georgia and exempts the resident citizen from such burden.

This assignment of error, as well as all the assignments of error heretofore set out, was made in the petition for *habeas corpus*, and all of said assignments of error were insisted upon at the hearing of this case in the supreme court of Georgia.

Wherefore the appellant, R. A. Williams, prays that these assignments of error may be considered, and that the said Supreme Court of the United States may cause further to be done
13 herein to correct the same what of right and according to the laws and customs of the United States should be done.

JAS. DAVISON,
Attorney for Petitioner.

P. O., Greensboro, Georgia.

The foregoing assignments of error considered and allowed. ordered that the same be filed as a part of the record in this case. This the 15 day of May, 1900.

T. J. SIMMONS,
Chief Justice Supreme Court of Georgia.

Filed in office May 18, 1900.
Z. D. HARRISON,
C. S. C., Ga.

4 R. A. WILLIAMS } *Habeas Corpus.* Morgan
v. } Superior Court, Jan.
EDGAR FEARS, Sheriff, and AYCOCK, Jailer. } 16th, 1900.

Original Bill of Exceptions.

Be it remembered that on the sixteenth day of January, A. D. 900, the petition for *habeas corpus* in the case of R. A. Williams *ersus* Edgar Fears, sheriff, and R. B. Aycock, jailer, the same being petition for *habeas corpus* by R. A. Williams, addressed to the udge of the superior court of the Ocmulgee circuit, alleging that petitioner was illegally restrained of his liberty by the defendants named, came on to be heard, pursuant to order, at chambers, before his honor Judge John C. Hart, judge of the Ocmulgee circuit, when, after hearing said case, the *habeas corpus* was denied, and an order passed remanding petitioner, R. A. Williams, to the custody of the sheriff.

To said ruling and judgment denying the writ of *habeas corpus* and refusing to declare the law under which plaintiff is held unconstitutional and void plaintiff, R. A. Williams, excepts and specially assigns the same as error. Plaintiff assigns as special error the judgment complained of for each and all the reasons set out in the petition for *habeas corpus*, to wit, that the warrant under which plaintiff was held was issued under a law that is contrary to the Constitution of the State of Georgia and of the United States, and the same is therefore void.

15 Plaintiff specifies as portions of the record material to a clear understanding of the errors complained of (1) the original petition for *habeas corpus*, (2) the answer thereto filed by the defendants, and (3) the judgment and order of said judge refusing the *habeas corpus* and remanding plaintiff to the custody of the law.

Plaintiff specifies as evidence material to a clear understanding of the errors complained of: The case was tried upon the issues of fact and law raised by the petition and answer, and there was no dispute between the parties as to the facts, but said petition and answer, sworn to and now a part of this record, contain all the evidence material to a clear understanding of the errors complained of.

And now, within the time allowed by law, comes the said R. A. Williams, plaintiff, and presents this his bill of exceptions, and prays that the same be signed and certified.

P. O., Greensboro, Ga.

JAS. DAVISON,
Attorney for Plaintiff.

I do certify that the foregoing bill of exceptions is true and contains all the evidence, and specifies all of the record material to a clear understanding of the errors complained of, and the clerk of the superior court of Morgan county is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified and certify the same as such, and cause the same to be transmitted to the Supreme Court, to the October term, 1899, now in session, that the errors alleged to
16 have been committed may be considered and corrected.

This the 3rd day of February, A. D. 1900.

JNO. C. HART,
Judge Superior Courts, O. C.

GEORGIA, }
Morgan County. }

I hereby certify that the foregoing is the true, original bill of exceptions filed in this office in the case of R. A. Williams *vs.* Edgar Fears, sheriff, and R. B. Aycock, jailer, therein referred to, and that a copy thereof has been made and is now of file in this office.

Witness my signature and seal of this court this Feb'y 13th, 1900.

[SEAL.] CHAS. W. BALDWIN, *Clerk.*

Due and legal service of the within bill of exceptions acknowledged, copy and all other and further notice and service waived. This the 5th day of February, 1900.

H. G. LEWIS, *Sol. Gen'l.*
E. W. BUTLER,
Co. Sol., M. C.

Feb'y 6, 1900.

(Indorsed on cover:) No. 23. Ocmulgee. Supreme court of Georgia, October term, 1899. R. A. Williams *v.* Fears, sheriff, *et al.* *Habeas corpus.* Original bill of exceptions. Filed in office this Feb'y 12, 1900. Chas. W. Baldwin, clerk superior court Morgan county. Filed in office Feb'y 14, 1900. Logan Bleckley, D. C. S. C. Ga.

17 Clerk's office, supreme court of Georgia.

ATLANTA, *May* 19, 1900.

I hereby certify that the foregoing pages hereto attached contain a true copy of the original bill of exceptions in the case therein stated as appears from said original now of file in this office.

Witness my signature and the seal of said court, hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

18 Morgan Superior Court, Jan. 16th, 1900.

R. A. WILLIAMS
v.
EDGAR FEARS, Sheriff, and AYCOCK, Jailer. } *Habeas Corpus.*

Transcript of the Record in said Case.

Original Petition for *Habeas Corpus.*

R. A. WILLIAMS
v.
FEARS, Sheriff. } *Habeas Corpus.* Morgan County, Madison, Georgia, January —, 1900.

STATE OF GEORGIA,
Morgan County.

To the Honorable John C. Hart, judge of the superior court of the Ocmulgee circuit:

The petition of R. A. Williams respectfully represents:

First. That petitioner is unlawfully restrained of his liberty (2) by Edgar Fears, sheriff, and R. B. Aycock, jailer, of Morgan county, Georgia, in the common jail of said county, at Madison, Georgia.

Second. The cause of said restraint is a warrant charging petitioner with a violation of the act of the General Assembly of 1898, page 24, sec. 2, par. "tenth," taxing emigrant agents, and petitioner was arrested by said Fears, sheriff, on the 14th day of January, 1900, by virtue of said warrant. It is not within the power of petitioner to annex a copy of said warrant.

Third. The restraint of petitioner in the manner shown is
19 illegal, because sec. 2, par. "tenth," page 24, act of the General Assembly of 1898, upon which said warrant is based and by virtue of which this arrest was made, is unconstitutional, null, and void.

(1.) Said act conflicts with and is in violation of art. 1, sec. 8 (3), (Code, 5974) of the Constitution of the United States; with art. 1, sec. 9 (Code, 5979), of the Constitution of the United States; with art. 4, sec. 2 (Code, 6003), and with the 14th amendment (Code, 6030) of the Constitution of the United States.

(2.) Said act also conflicts with and is in violation of par. 25, art. 1 (Code, 5722); with (2) art. 1, sec. 4, par. 1 (Code, 5732); with (3) art. 1, sec. 4, par. 2 (Code, 5733); with (3) art. 1, sec. 5, par. 2 (Code, 5735); with (4) art. 1, sec. 1, par. 3 (Code, 5699); with (5) art. 3, sec. 7, par. 8 (Code, 5771), and with (6) art. 7, sec. 2, par. 1 (Code, 5883), of the constitution of the State of Georgia.

Wherefore petitioner prays that your honor grant the writ of *habeas corpus*, requiring the said Edgar Fears, sheriff, and R. B. Aycock, jailer, to bring the said papers under which he claims authority to act, and to bring the body of your petitioner before you, at a time and place to be specified in the writ, for the purpose of examination into the cause of the detention.

R. A. WILLIAMS.

JAS. DAVISON,
Attorney for Petitioner.

STATE OF GEORGIA, }
Morgan County. }

Personally comes Jas. Davison, att'y, etc., for R. A. Williams, who, being duly sworn, deposes and says that the allegations
20 contained in the foregoing petition are true.

JAMES DAVISON.

Sworn to and subscribed before—
JNO. C. HART.

This the 15th day of January, 1900.

STATE OF GEORGIA, }
Morgan County. }

To Edgar Fears, sheriff, and R. B. Aycock, jailer:

You are hereby commanded to produce the body of R. A. Williams, alleged to be illegally detained by you, together with the cause of the detention, before me, on the 16 day of January, 1900, at the hour of 11 o'clock, at Union Point, Georgia, then and there to be disposed of as the law directs.

Given under my hand and official signature this the 15 day of January, 1900.

JNO. C. HART,
Judge S. C., O. C.

Due and legal service of the foregoing petition and order acknowledged; copy, service, and all further notice and service is waived.

This January 15th, 1899.

R. B. AYCOCK, *Jailer.*
EDGAR FEARS,
Sheriff, M. C.

Answer to Habeas Corpus.

In re R. A. WILLIAMS } *Habeas Corpus.* Morgan County, Georgia,
v. } January 16, 1900.
EDGAR FEARS, Sh'ff. }

Before his honor Jno. C. Hart, judge of the Ocmulgee circuit.

21 STATE OF GEORGIA, }
County of Morgan. }

And now come Edgar Fears, sheriff of said State and county, and R. B. Aycock, deputy sheriff of said State and county and the jailer at Madison, Morgan Co., Ga., respondents in the above-stated *habeas corpus*, and, answering the writ served upon, say:

1st. Respondent Fears says that on January 13, 1900, a warrant issued by the county court of Morgan county, Ga., based upon an affidavit made by L. T. Penick, the tax collector, charging R. A. Williams with the offense of acting as an emigrant agent in Morgan

county without a license, was placed in this respondent's hands by H. W. Baldwin, the county judge of said county; that in obedience thereto this respondent, as sheriff of said county, on Jan. 14, 1900, arrested the body of said R. A. Williams, and said Williams failing to give bond, or demand a committal trial, or a trial on the issues of the warrant in the county court, then in session, based upon an accusation to be framed upon said affidavit, and said arrest being made on said Jan. 14, 1900, at night, the same being Saturday of the week, and the next day Sunday, the respondent delivered the custody of said Williams to R. B. Aycock, the jailer of said county of Morgan, to be safely kept until discharged by due process of law.

This respondent attaches to this his answer the original affidavit and warrant which he served, with all the entries thereon, and makes the same a part of this answer.

2nd. Respondent R. B. Aycock says that on Sunday morning, about the hour of 4 a. m., Edgar Fears, as sheriff of said county, delivered to this respondent, as jailer of said county, the body

22 of R. A. Williams, together with the affidavit and warrant described in the 1st section of this answer; that this respondent incarcerated said Williams in the common jail of the county of Morgan and now detains said Williams.

3rd. Both respondents herewith produce before your honor the body of said Williams, as required in the order of said *habeas corpus* of your honor.

4th. Respondents respectfully submit that they sought to discharge their duties under the law as they understood and knew them and await your honor's further orders in the premise-.

Respectfully submitted Jan. 16, 1900.

E. W. BUTLER,
Co. Sol., M. C., Attorney for Respondents.

GEORGIA, }
Morgan County. }

We, Edgar Fears, sheriff, and R. B. Aycock, jailer, do swear that the above and foregoing answer is true and correct.

Sworn to and subscribed before me 16th day of January, 1900.

EDGAR FEARS.
R. B. AYCOCK.

Sworn to and subscribed before me Jan. 16th, 1900.
H. W. BALDWIN, *Co. Judge.*

(Copy of warrant attached.)

STATE OF GEORGIA, }
Morgan County. }

Personally came L. T. Penick, who on oath says that to the best of his knowledge and belief R. A. Williams did on the 10th

23 day of January, 1900, in the county aforesaid, commit the offense of acting as emigrant agent without a license, and

deponent makes this affidavit that a warrant may issue for his arrest.

L. T. PENICK.

Sworn to and subscribed before me this the 13th day of Jan'y, 1900.

H. W. BALDWIN, *Co. Judge.*

GEORGIA, }
Morgan County. }

To the sheriffs, *his* deputies, the bailiffs, or any lawful constable of said State:

L. T. Penick makes oath before me that R. A. Williams, on the 10th day of January, 1900, in the county aforesaid, did commit the offense of acting as emigrant agent without license. You are therefore commanded to arrest the said R. A. Williams and bring him before me, to be dealt with according to law.

H. W. BALDWIN,
County Judge, M. C.

Judgment and Order of the Court.

In re R. A. WILLIAMS, Petitioner, &c.,
v.
EDGAR FEARS, Sheriff, &c., and R. B. AYCOCK, Jailer, Respondents. } *Habeas Corpus.*

Before his honor John C. Hart, judge of the Ocmulgee circuit, Morgan county, Ga.

The above stated matter having this day come on for a hearing before me, under the petition and answers, after hearing argument, it is considered, ordered, and adjudged the petition as prayed be be denied. Ordered further that the custody of said R. A.
24 Williams be retained by said Edgar Fears, sheriff, under the warrant from Morgan county court, until discharged by due process of law.

At Union Point, Ga.
This January 16, 1900.

JNO. C. HART,
Judge S. C., O. C.

STATE OF GEORGIA, }
Morgan County. }

I, Chas. W. Baldwin, clerk of the superior court of Morgan county, do hereby certify that the foregoing seven pages contain a true and complete transcript of such parts of the record in the case of R. A. Williams *v.* Edgar Fears, sheriff, and R. B. Aycock, jailer, as are in the bill of exceptions specified.

Witness my signature and the seal of said court, hereto affixed this the 13 day of February, A. D. 1900.

[SEAL.] CHAS. W. BALDWIN, *Clerk.*

No. 23. Ocmulgee. Supreme court of Georgia, October term, 1899. R. A. Williams *v.* Fears, sheriff, *et al.* *Habeas corpus.* Transcript of the record. Filed in office Feb'y 14, 1900. Logan Bleckley, D. C. S. C. Ga.

24½ Clerk's office, supreme court of Georgia.

ATLANTA, *May* 19, 1900.

I hereby certify that the foregoing pages hereto attached contain a true copy of the transcript of record in the case therein stated, as appears from said transcript now on file in this office.

Witness my signature and the seal of said court, hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

25 Ocmulgee, Oct. T., 1899.

WILLIAMS
v.
FEARS, Sheriff, *et al.* } No. 23.

By the Court, per COBB, *J.*:

1. The term "emigrant agent," in the general tax act of 1898, means a person engaged in hiring laborers in this State to be employed beyond the limits of the same.

2. The imposition of a tax upon such a person is not a regulation of interstate commerce.

3. A law imposing a tax upon such a person is not such a restriction upon the right of a citizen to move from one State to another as that it abridges the privileges or immunities of citizens of the United States within the meaning of the fourteenth amendment to the Constitution of the United States.

Nor is such a law a discrimination in favor of persons hiring laborers to be employed within the limits of the State as to amount to a denial of the equal protection of the laws within the meaning of that amendment.

The case of Shepperd *v.* Commissioners, 59 Ga., 535, upon a review thereof, is affirmed.

4. Nor is such a law violative of any provision of the constitution of this State.

26 COBB, *J.*:

Williams was arrested upon a warrant charging him with "the offense of acting as emigrant agent without a license." He made application to the judge of the superior court of the Ocmulgee circuit for a writ of *habeas corpus*, alleging that the warrant under which he was arrested charged him with a violation of that provision of the general tax act of 1898 which imposed "upon each emigrant agent or employer or employee of such agents doing business in this State the sum of five hundred dollars for each county

in which such business is conducted." Acts 1898, p. 24. He further alleged that the law which he was charged with having violated was in conflict with certain provisions of the constitutions of the United States and of the State of Georgia, enumerating in the application the various clauses of which the act was alleged to be violative. The writ of *habeas corpus* was issued, and on the day fixed for the hearing the officer having the accused in custody appeared, produced the prisoner, and answered that he had him in custody under a warrant of the character alleged. No evidence was offered, and the judge, after hearing argument upon the application and answer, remanded the prisoner to the custody of the officer having him in charge, to be held by him until discharged by due process of law. To this ruling the accused excepted.

1. The tax act of 1898, which embraces the tax in the language above quoted, provides that before any person shall be authorized to carry on the business of an emigrant agent he shall go
27 before the ordinary of each county in which such agent proposes to do business, and register his name and place of business and at the same time pay the tax to the tax collector. If he fails to register with the ordinary he is guilty of a misdemeanor. Acts 1898, pp. 24, 27. The warrant was issued upon an affidavit charging the accused with having violated the above-quoted provision of the tax act. It does not distinctly appear whether he is charged with having done business without registering or whether having registered he carried on the business without paying the tax. As an affidavit to authorize the issuance of a warrant need not set forth the offense with the same particularity required in indictments, the charge in the affidavit, although general in its nature and to some extent indefinite, would be sufficient to authorize the issuance of a warrant under the laws of this State. Williams *v.* The State, 107 Ga., 693; Brown *v.* The State, — Ga. —; 34 S. E., 1031. It is immaterial to a consideration of the questions involved in the present case whether the accused was charged with having carried on the business of an emigrant agent without having registered or without having paid the tax, for the reason that if the provision of the tax act imposing the tax is unconstitutional he cannot be punished for a failure to do either.

It becomes necessary at the outset to determine what is meant by the term emigrant agent as used in the above-quoted provision of the tax act. An emigrant is defined to be: "One who emigrates or quits one country or region to settle in another."—Web. Internat.
28 Dict. "An emigrant is one who quits his country for any lawful reason, with a design to settle elsewhere, and takes his family and property with him."—10 Am. & Eng. Enc. Law (2nd ed.), 1042. To emigrate is "to remove from one country or State to another for the purpose of residence."—Web. Internat. Dict. In the absence of a contrary reason to be found in the legislation of this State, the word emigrant would be given its ordinary meaning, and therefore an emigrant agent doing business in this State would be held to be one engaged in the business of removing, or inducing or assisting to remove, persons domiciled in this State to another

country or State for the purpose of acquiring there a new residence. Is there anything in the legislation of this State requiring that the term emigrant agent should be given a different meaning? The term appears for the first time in an act passed in 1876 (Acts 1876, p. 17), which declared that any person carrying on the business of an emigrant agent in this State without having first obtained a license therefor from the ordinary, for which he should pay the sum of $100, should be guilty of a misdemeanor. The term emigrant agent was by this act defined to be "any person engaged in hiring laborers in this State, to be employed beyond the limits of the same." In 1877 (Acts 1877, p. 120), an act was passed which declared that "it shall not be lawful for any emigrant agent or agents to solicit or procure emigrants to leave the State, or to act in the capacity of emigrant agents for said purpose," without procuring a license from the tax collector in each county in which such agent proposed to do business, for which he should pay the sum of $500. It is unnecessary
29 in the present case to determine whether either or both of the acts last referred to are still of force, as the provision of the tax act of 1898 is the only subject of attack. We look to these acts, therefore, merely for the purpose of ascertaining the meaning to be given to the term emigrant agent as used in the act of 1898. The term was defined in the act of 1876, and this definition has never been changed. The act of 1877 imposed a tax upon emigrant agents—that is, persons engaged in hiring laborers to go beyond the limits of the State—who should solicit or procure emigrants—that is, persons leaving the State for the purpose of changing their residence—to leave the State. In other words, the act of 1876 imposed a tax upon persons who should be engaged in the business of hiring laborers to leave the State, and the act of 1877 simply imposed an additional tax upon such persons if they should also be engaged in soliciting or procuring persons to change their residence from this State to another. In the light of the definition given in the act of 1876 and of the fact that the act of 1877 did not in any way undertake to change this definition, no other construction than the one above indicated can properly be given to the latter act. When, therefore, in subsequent legislation, the General Assembly used the term emigrant agent with nothing to indicate what was meant by the term, it will be presumed that it had in mind the definition theretofore given to the term. In all of the general tax acts passed after the act of 1877 language similar to that above quoted from the act of 1898 was employed, and it will be held
30 that in those acts the legislature intended by the use of the words emigrant agent to impose a tax upon persons engaged in the business of "hiring laborers in this State to be employed beyond the limits of the same."

The act of 1877 was carried into the Code of 1882, and, notwithstanding the act of 1876 was omitted from that code, the definition of emigrant agent, as contained in the latter act, was therein embraced. Code of 1882, sec. 4598 (*a*), (*b*), (*c*). It was evidently the opinion of the codifiers that the act of 1877 repealed the act of 1876 except so far as the definition of emigrant agent was concerned.

Both the act of 1876 and the act of 1877 were omitted from the Code of 1895, the only reference to either act being contained in section 601 of the penal code, which provides that "any person who shall solicit or procure emigrants, or shall attempt to do so, without first procuring a license as required by law, shall be guilty of a misdemeanor." This section was taken from the act of 1877, but the words "any person" were substituted for the words "any emigrant agent" used in that act. It is, however, unnecessary in this case to determine what effect is to be given to this section.

2. This brings us down to that provision of the general-tax act of 1898, above referred to, the validity of which is assailed in the present case. It is to be noted that the acts of 1876 and 1877 provided for a license, while the tax acts provide for a tax upon occupation, these acts describing the tax imposed upon emigrant
31 agents as a specific tax, and that occupation being embraced in the act along with other occupations of various character; and the act distinctly recites that it is passed for the purpose of collecting a tax for the support of the government and the public institutions, for educational purposes, and to pay the public debt. It thus being clear that the sum required to be paid is a tax upon an occupation, and not a license to do business, the question as to whether it is so excessive as to amount to a prohibition of the carrying on of the business referred to is not involved in this case, nor is such a question at all raised in the present case.

Giving to the term emigrant agent the definition set forth in the act of 1876, the question to be now considered is whether the State has the power to impose a tax upon a person engaged in that occupation. It is contended by counsel for plaintiff in error that the State has no such power, and in support of this it is argued that the imposition of such a tax is in violation of various provisions of the Constitution of the United States and of the State of Georgia. It is said that the law is violative of that provision of the Constitution of the United States in which the power is given to Congress to regulate commerce among the several States. If the act imposes a tax upon persons engaged in commerce among the States, it is a regulation of such commerce and is void. Such a tax is in effect a tax upon the business itself. This has been so repeatedly ruled by the Supreme Court of the United States that it will not at this day be
32 questioned. Brown *v.* Maryland, 12 Wheat., 419; Robbins *v.* Shelby Taxing Dist., 120 U. S., 489; Le Loup *v.* Port of Mobile, 127 U. S., 640; McCall *v.* California, 136 U. S., 104; Crutcher *v.* Kentucky, 141 U. S., 47; Brennan *v.* Titusville, 153 U. S., 289. Is the law under consideration a regulation of interstate commerce? What is commerce? What does that term as used in the Constitution of the United States include? Perhaps the earliest definition of the term to be found in the reports of the United States Supreme Court is that given by Mr. Chief Justice Marshall in Gibbons *v.* Ogden, 9 Wheaton, 1. On page 188 the Chief Justice said: "Commerce undoubtedly is traffic, but it is something more. It is intercourse. It describes the intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules

for carrying on that intercourse;" and again he says, "Commerce includes every species of commercial intercourse between the United States and foreign nations." It was decided in that case that navigation was a branch of commerce. In Brown *v.* Maryland, 12 Wheaton, 419, it was said that commerce includes "trade, traffic, intercourse." In Railroad *v.* Fuller, 17 Wall., 568, it was said, "Commerce is traffic, but it is much more. It embraces also transportation by land and water and all the means and appliances necessarily employed in carrying it on." In Gloucester Ferry Company *v.* Pennsylvania, 114 U. S., 196, it was held, "Commerce among the States consists of intercourse and traffic between the citizens and includes transportation of persons and property and the navigation of public waters for that purpose, as well as the purchase, sale, and exchange of commodities."

33 It was further held in that case that "the power also embraces within its control all the instrumentalities by which commerce may be carried on and the means by which it may be aided and encouraged." In County of Mobile *v.* Kimball, 102 U. S., 691, it was said: "Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities." In Wabash, etc., Railway Company *v.* Illinois, 118 U. S., 557, 558, Mr. Justice Miller uses this language: "This court holds now, and has never consciously held otherwise, that a statute of a State intended to regulate or to tax or to impose any other restriction upon the transmission of persons or property or telegraphic messages from one State to another is not within that class of legislation which the States may enact in the absence of legislation by Congress, and that such statutes are void even as to that part of such transmission which may be within the State." It may be deduced from these decisions that, in general, commerce comprehends traffic, intercourse, navigation, and the transportation of persons and property, and the means and instrumentalities by which these four things are effectuated. If, therefore, the law under consideration seeks to regulate or restrict any one of these four forms of commerce among the States, or if it seeks to burden any instrumentality by which they are carried on, it is void and must be so declared. Dealing with these four branches of commerce in the order named, we will inquire, first, whether the business of

34 "hiring laborers in this State, to be employed beyond the limits of the same," is traffic. Traffic is "commerce; trade; sale or exchange of merchandise, bills, money, and the like."—Bouvier. "The passing of goods or commodities from one person to another for an equivalent in goods or money."—Anderson. As applied to interstate commerce, it has been defined to be "The sale by itinerant venders in one State of the goods, wares, and merchandise of other States, and the regulation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made."—11 Am. & Eng. Enc. (1st ed.), p. 544 (n.). We do not think the business of

procuring labor contracts to be performed in another State can be properly denominated traffic. Labor is not an article of merchandise or a commodity. It is toil, mental and physical. It is a part of the person himself, which he may dispose of, it is true, but which is not severable from him, and which accompanies him wherever he goes. It will not be pretended that persons are the subjects of commerce. Indeed, even when slavery existed in this country, a case arose in which the right of a State to regulate the admission into its territory of slaves from other States was incidentally involved, and the majority of the judges of the Supreme Court as it was then constituted were of the opinion that the State had such right, it not being a regulation of commerce among the States within the meaning of the Constitution of the United States. Groves *v.* Slaughter, 15 Pet., 448. See also Com. *v.* Griffin, 42 Ky., 202.

35 Is the law a regulation or restriction of intercourse among the citizens of this State and those of other States? Under this branch of commerce the States are prohibited from passing any law which either restricts the free passage of the citizens of the United States through the several States or which undertakes to regulate or restrict free communication between the citizens of the several States. A tax on the right of a citizen to leave the State or on the right of a citizen of another State to come into the State is a regulation of interstate commerce and void. Crandall *v.* Nevada, 6 Wall., 35; Henderson *v.* The Mayor, 92 U. S., 259; People *v.* Campagnie Generale Transatlantique, 107 U. S., 59; Passenger cases, 7 How., 282. Nor can a State pass a law which attempts to regulate or restrict communication between the citizens of different States. Western Union Tel. Co. *v.* Pendleton, 122 U. S., 347; Pensacola Tel. Co. *v.* Western Union Tel. Co., 96 U. S., 1. But the law under consideration in the present case neither regulates nor restricts the right of citizens of this State to leave its territory at will, nor to hold free communication with the citizens of other States. The citizen may leave when he pleases, but the person who makes it a business of inducing him to go to perform labor elsewhere must pay an occupation tax. This is certainly no infringement upon the right of the citizen. Nor does the law impose any burden upon any instrumentality by which his free intercourse with the citizens of other States is effectuated. The law certainly has no reference to navigation.

36 Nor do we think it is a regulation of transportation among the States. A State has no right to impose a burden upon the means by which persons or property may be transported from one State to another. Morgan *v.* New Orleans, 112 U. S., 69; Gloucester Ferry Company *v.* Pennsylvania, 114 U. S., 196. Nor can a State tax an agent of a company engaged in interstate transportation, as was held in McCall *v.* California, 136 U. S., 104.

But this law imposes no burden upon transportation companies or their agents. Its connection with transportation is exceedingly remote. That the business of hiring laborers to go beyond the State may increase the business of those engaged in interstate transporta

tion it is true, but it is not interstate transportation itself, and consequently not for this reason contrary to the interstate commerce clause of the Federal Constitution.

We are aware that the supreme court of Alabama in Joseph *v.* Randolph, 71 Ala., 499; S. C., 46 Am. Rep., 347, held an act similar to the one involved in the present case contrary to the interstate commerce clause of the Constitution of the United States, but we cannot give our assent to the reasoning upon which that decision was based. The decision in State *v.* Moore, 113 N. C., 697, cited in the argument, was based upon provisions of the State constitution and has no bearing upon this question. No decision of the Supreme Court of the United States was cited, nor have we been able to find any in line with the ruling made in the Alabama case. Some of the language used by different members of the court when
37 dealing with the subject of interstate commerce may be broad enough to include a law of the character involved in the present case, but this is not true of any decision of that court. The court itself has gone very far in its construction of the commerce clause of the Constitution, and we are unwilling to extend the construction farther than its decisions demand.

We conclude that the provision of the general tax act of 1898, imposing a tax upon emigrant agents doing business in this State, is not a regulation of or restriction upon any business which is properly comprehended within the terms commerce among the States; and, this being so, the law will be held to be valid, notwithstanding it may place a burden upon a business which may be an aid to, but not a part of, commerce among the States.

3. It is claimed that the imposition of the tax is an interference with the right of a citizen to move from one State to another, and therefore the statute imposing it is a law which abridges "the privileges and immunities of citizens of the United States" within the meaning of the fourteenth amendment to the Constitution of the United States. That this objection is without merit will sufficiently appear from what is above said in dealing with the question as to whether the law under consideration is a regulation of interstate commerce.

It is further contended that the law imposing the tax is invalid because it is violation of that provision of the 14th amendment to the Constitution of the United States which declares that no
38 State shall deny to any person within its jurisdiction the equal protection of the laws, the contention being that the taxing of persons engaged in hiring laborers within the State to perform labor beyond the limits of the State, and the failure to tax persons hiring laborers to work within the State, is such a discrimination as to be violative of that provision of the Constitution above referred to. A similar objection was made to the act of 1876, and was held by this court not to be well taken in the case of Shepperd *v.* Commissioners, 59 Ga, 535. To quote the language of Judge Bleckley in that case is all that is necessary to show that the law is not subject to the objection made. It is there said, referring to the act of 1876: "The act seems to us constitutional. It requires a

license as preliminary to carrying on a certain business, and exacts a license fee of one hundred dollars, which fee becomes county revenue. Whoever engages in the business is equally subject to the terms and provisions of the act. No discrimination is made in favor of residents over non-residents. It is said that the discrimination lies in requiring an expensive license as a condition of hiring laborers within the State to be employed beyond the State, without imposing a like burden on hiring for employment within the limits of the State. But the license required is for carrying on a business, and it does not appear that hiring for internal employment has become a business here, or is pursued as such by any person or persons. This is enough to dispose of the objection. But if it were otherwise, no authority has been
39 cited, and we know of none, that would prevent the State from acting upon occupations (carried on within the State) in a way to incumber some of them with a tax or license fee and leave other occupations, dissimilar in tendency, though not in nature, to the free will of those who might be inclined to engage in them. Suppose two rival establishments were in active operation in our midst, one engaged in offering the laboring population inducements to leave and the other engaged in offering them inducements to remain, could not the State discriminate between the two in police and fiscal legislation? Would she be obliged to grant the same indulgence and show the same favor to an instrumentality which tended to depopulate her territory as to one of opposite tendency? It is true that to go out of the State for employment is not necessarily to remove or withdraw permanently; but doubtless a large percentage of hirelings who go out on contracts of employment never return. Persons who make it a business to hire laborers here for employment elsewhere may be required to procure and pay for a license." It was insisted in the argument that the decision just referred to was unsound, and permission was asked and granted to review the same with a view to having it overruled. We are satisfied, however, that the conclusion reached in that case was correct, and we adhere to the decision therein rendered.

4. It was claimed that the law was violative of those provisions of the constitution of this State which are embodied in sections 5699, 5722, 5732, 5733, 5735, 5771, 5883 of the Civil Code. In what
40 way the law violates these different provisions of the constitution is not set forth in the pleadings, nor is any reason assigned in the brief of counsel why the law is in conflict with them. We have been unable to discover any antagonism between the law and the clauses of the constitution referred to. The right of the legislature to tax occupations and classify the same for taxation is so well settled now that such an objection needs nothing more than a passing notice. If the legislation now under review is violative of any provision of the State or Federal constitution our attention has not been called to the same, nor are we ourselves aware of any.

There being nothing in the Constitution of the United States which prohibits this State from dealing with this subject, and there being nothing in the constitution of the State which prohibits the

General Assembly from enacting the law in question, it follows that the judge of the superior court did not err in remanding the accused to the custody of the officer having him in charge, to be held by him until discharged by due process of law.

Judgment affirmed, all the justices concurring.

41 Clerk's office, supreme court of Georgia.

ATLANTA, *May* 19, 1900.

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the opinion of the supreme court of Georgia in the case therein stated, as appears from the original of file in this office.

Witness my signature and the seal of said court, hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

42 Supreme court of the State of Georgia.

ATLANTA, GA., *April* 11, 1900.

The honorable supreme court met pursuant to adjournment. The following judgment was rendered:

R. A. WILLIAMS
versus
EDGAR FEARS, Sheriff, *et al.*

This case came before this court upon a writ of error from the superior court of Morgan county, and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed, all the justices concurring.

Bill of costs, $10.00.

Supreme court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, *May* 19, 1900.

I certify that the above is a true extract from the minutes of the supreme court of Georgia, and that Jas. Davison paid the above bill of costs.

Witness my signature and the seal of said court, affixed the day and year last above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

43 Clerk's office, supreme court of Georgia.

ATLANTA, *May* 19, 1900.

I hereby certify that the foregoing pages hereto attached contain a complete record in the case of R. A. Williams, plaintiff in error,

v. Edgar Fears *et al.*, defendants in error, as appears from the records and files of this office, the said record consisting of the original writ of error and citation, copies of the petition for writ of error, bond and assignments of error, and of the original bill of exceptions and transcript of record, and of the opinion and judgment of the supreme court of Georgia.

Witness my signature and the seal of said court, hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

Endorsed on cover: File No., 17,771. Georgia supreme court. Term No., 287. R. A. Williams, plaintiff in error, *vs.* Edgar Fears, sheriff, and R. B. Aycock, jailer. Filed May 21st, 1900.

20554

UNITED STATES OF AMERICA..

To the Honorable Supreme Court of the United States:

By an Act of the General Assembly of Georgia, approved December 21st, 1898, entitled, "An Act to levy and collect a tax for the support of the State Government," etc., there was levied as an occupation tax "upon each emigrant agent or employee of such agent doing business in this State, the sum of Five Hundred Dollars for each County in which such business was conducted." (Act of General Assembly of Georgia 1898, page 24, tenth.) A violation of said law was made a misdemeanor punishable by a fine of one thousand dollars or by imprisonment for not less than one year. (Id. page 28.)

The appellant, R. A. Williams, failed to pay the tax, and was arrested in Morgan county, Ga., on the 14th day of January, 1900, for a violation of said law. He, thereupon, presented his petition for *habeas corpus* to the Judge of the Superior Court. At the hearing the petition was refused. Upon appeal to the Supreme Court of Georgia, that decision was affirmed. From said judgment by the Supreme Court of Georgia appellant brings error to this Court.

The petition for *habeas corpus* charges that the law in question is unconstitutional, as being violative of Article 1, Section 8, paragraph 3; of Article 4, section 2, and of the 14th amendment of the Constitution of the United States.

And now comes James Davison, solicitor for said

appellant R. A. Williams, and applies to have said case advanced for hearing, for the following reasons.

1st. Because the collection of said tax is stayed until this hearing.

2d. Because the appellant will be liable for said tax for two different years, to wit: 1899 and 1900, and if liable at all he is liable in a number of counties, and the pendency of this question greatly embarrasses these counties in the collection of revenue.

3d. Because this is a criminal case, and the appellant is deprived of his liberty pending a hearing.

Respectfully submitted in behalf of the appellant by

JAS. DAVISON,
Solicitor for Appellant.

P. O. address, Greensboro, Ga.

Due and legal service of the above and foregoing motion to advance the case of Williams vs. Fears et al. pending in the Supreme Court of the United States, is hereby acknowledged. Copy of same and further service or notice relative thereto waived. Consent is given for the motion to be presented to the Supreme Court at such time as the solicitor for appellant may see proper.

This, the 18 day of May, 1900.

J. M. Terrell
Attorney General
of Georgia.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 287.

R. A. WILLIAMS, PLAINTIFF IN ERROR,

vs.

EDGAR FEARS, SHERIFF, AND R. B. AYCOCK, JAILER.

IN ERROR TO THE SUPREME COURT OF GEORGIA.

BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

R. A. Williams, the plaintiff in error, was arrested by Edgar Fears, the defendant in error, sheriff of Morgan county, Georgia, on January 14, 1900. The arrest was by virtue of a criminal warrant charging him with the offense of "acting as emigrant agent without a license." This warrant was based on an act of the General Assembly of Georgia imposing an annual occupation or business tax "upon each emigrant agent, or employer or employé of such

agents, doing business in this State, the sum of five hundred dollars for each county in which such business is conducted." An emigrant agent is defined to be "a person engaged in hiring laborers in this State to be employed beyond the limits of the same" (Record, p. 13).

The law further provides that a failure to pay the tax shall be a misdemeanor, subjecting the offender to a fine of not less than double the tax, or to confinement in the chain gang.

Plaintiff in error thereupon presented his petition for *habeas corpus* to the judge of the superior courts of the Ocmulgee circuit. The petition for *habeas corpus* alleged that the arrest and detention of the petitioner was unlawful, because the law charged to have been violated was in conflict with certain named clauses of the State and Federal constitutions.

On January 16 a hearing was had on the petition and answer thereto, no question of fact being raised by the pleadings. The statute was adjudged to be constitutional and the defendant was remanded to the custody of the law.

Exception to this judgment was taken to the supreme court of Georgia, and on April 11 the judgment of the superior court was affirmed by the supreme court. By writ of error the judgment of the supreme court of Georgia is brought to this court for review.

ASSIGNMENTS OF ERROR.

The first two grounds of error assigned are that the judgment of the supreme court of Georgia is contrary to law and the evidence.

The third assignment of error is that the supreme court of Georgia erred in declaring constitutional and valid the act of the General Assembly of Georgia, imposing an occupation tax of five hundred dollars per annum, for each county in which the business is conducted, "upon each person engaged

in hiring laborers in this State to be employed beyond the limits of the same," because said law imposes a tax on commerce among the States and levies a duty on exports, and therefore conflicts with and violates article 1, section 8, paragraph 3, and article 1, section 9, paragraph 5, of the Constitution of the United States.

The fourth assignment of error charges that said judgment is in conflict with and violative of the fourteenth amendment to the Constitution of the United States:

1. Because the act of the General Assembly of Georgia thereby declared valid restricts the right of the citizen to remove from one State to another and abridges the privileges and immunities of the citizen.

2. Because said law impairs the natural right of the laborer to labor; it is a tax on the laborer, and therefore class legislation, aimed entirely at laborers; it applies only to those laborers who seek employment beyond the State.

3. Because said law imposes a prohibitory tax (five hundred dollars) on the person hiring for employment *beyond* the State, and exempts the person hiring for employment *within* the State. The business being hiring for employment, the situs of the employment does not constitute a difference which separates the two into distinct classes, so as to make lawful the taxing of one and the exemption from taxation of the other.

The fifth assignment of error charges that the judgment of the supreme court of Georgia conflicts with and violates article 4, section 2, of the Constitution of the United States, because the law declared valid by said judgment is a denial to the non-resident of the equal protection of the law, in that it taxes the non-resident who seeks to obtain labor in Georgia and exempts the resident citizen from such tax.

ARGUMENT.

The issues presented by the record will be more clearly defined by two preliminary observations:

1. The law charged to be unconstitutional.

The term "emigrant agent," as used in the statute under review, is a technical term, and it means "a person engaged in hiring laborers in this State to be employed beyond the limits of the same."

The term has been so defined by the supreme court of Georgia in this case.

Record, pp. 13, 14, 15.

The definition is clearly correct (Black on Interpretation of Laws, Hornbook series, 1896, pp. 110, 112, 204, 365, 366). It has not been assigned as error by either party to this record; therefore it will not be reviewed by this court.

2. This law is not a police regulation.

Aside from the very excessive license, the act contains none of the elements of a police law.

In State *vs.* Moore, 113 N. C., 697, the supreme court of North Carolina, declaring void a statute of that State imposing a tax similar to this, held:

"The occupation of an emigrant agent does not belong to that class of trades or occupations which are so inherently harmful or dangerous to the public that they may be either directly or indirectly prohibited."

Joseph *vs.* Randolph, 71 Ala., 499, in adjudging unconstitutional a statute of that State, identical to the one now under review, says:

"5. Same; cannot be sustained as a legitimate exercise of the police power of the State. Said act has none of the characteristics of a law designed to provide regulations promotive of domestic order, morals, health, or safety or kindred subjects properly falling within the purview of domestic police."

In Brennan *vs.* Titusville, 153 U. S., 289, on pages 299, 300, Mr. Justice Brewer reviews the decisions of this court to the effect that laws of this character cannot be upheld as police regulations.

As the supreme court of Georgia holds this law to be a tax or revenue act (Record, p. 16), further authority is not needed to the effect that it cannot be sustained as a police regulation.

From the foregoing we deduce this proposition: Is it constitutional for a State to impose an occupation tax of five hundred dollars per annum, for each county in which such business is conducted, upon each agent, or employer or employé of such agent, engaged in hiring laborers in such State, to be employed beyond the limits of the same?

I.

It is insisted that the imposition of this tax conflicts with and violates article 1, section 8, paragraph 3, and article 1, section 9, paragraph 5, of the Constitution of the United States, because it regulates commerce among the States and levies a duty on exports.

If the occupation of "hiring laborers in this State to be employed beyond the limits of the same" is an occupation connected with, or relating to, interstate commerce, it is exempt from State taxation. A tax on an occupation connected with interstate commerce is a regulation of such commerce.

Brown *vs.* Maryland, 12 Wheaton, 419.
Robbins *vs.* Shelby Taxing District, 120 U. S., 489.
Leloup *vs.* Mobile, 127 U. S., 640.
McCall *vs.* California, 136 U. S., 104.
Crutcher *vs.* Kentucky, 141 U. S., 47, 58.
Brennan *vs.* Titusville, 153 U. S., 289.
Adams Express Company *vs.* Ohio, 166 U. S., 185, 218.

We quote from the opinion of Mr. Justice Cobb in this case:

"If the act imposes a tax upon persons engaged in commerce among the States, it is a regulation of such commerce and is void. Such a tax is in effect a tax upon the business itself. This has been so repeatedly ruled by the Supreme Court of the United States that it will not at this day be questioned" (Record, p. 16).

The conclusion reached by the supreme court of Georgia, however, is that the occupation of hiring laborers in a State, to be employed beyond the limits of the same, is not a business connected with commerce among the States (Record, p. 19). Plaintiff's insistence to the contrary narrows this issue down to the single question, What is commerce among the States?

In the opinion above referred to commerce is defined as "traffic, intercourse, navigation, and the transportation of persons and property and the means and instrumentalities by which these four things are effectuated" (Record, p. 17).

The following authorities are quoted from in support of that definition:

Gibbons *vs.* Ogden, 9 Wheaton, 1.
Brown *vs.* Maryland, 12 Wheaton, 419, 446.
Railroad *vs.* Fuller, 17 Wallace, 568.
Mobile *vs.* Kimball, 102 U. S., 691.
Gloucester Ferry Co. *vs.* Pennsylvania, 114 U. S., 196.
Wabash R. R. Co. *vs.* Illinois, 118 U. S., 557, 558.*

It is submitted that, while quite correct so far as it goes, the above definition is by no means exhaustive of the broad, comprehensive term contemplated by the framers of our organic law.

The cases cited are no authority that this business is not

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*Other definitions of "commerce" are to be found in Amer. & Eng. Encyclopedia of Law, 2d edition, vol. 6, pp. 218, 221; Amer. & Eng. Encyclopedia of Law, 1st edition, vol. 11, p. 540; also Commerce Clause Federal Constitution (Prentice & Egan, 1898), p. 43.

an occupation connected with interstate commerce. In none of them was the present question involved, and for it to have been decided, therefore, would be nothing short of unwarranted.

In Pensacola Telegraph Company *vs.* Western Union Telegraph Company, 96 U. S., 1, it is held:

"The powers conferred upon Congress to regulate commerce with foreign nations and among the several States are not confined to the instrumentalities of commerce known or in use when the Constitution was adopted, but keep pace with the progress of the country and adapt themselves to the new developments of time and circumstances."

And in Walling *vs.* Michigan, 116 U. S., 456, Mr. Justice Bradley quotes from the case of Mobile *vs.* Kimball, 102 U. S., 691, 697:

"The subjects, indeed, upon which Congress can act under this power are of infinite variety."

Means and agencies facilitating intercourse among the people, as well as their removal from State to State, are vitally essential to the common welfare and to national progress. For a State to restrict a business having for its object the migration of persons from one State to another, is of more concern to all the nation than for the sale or transmission of property to be restricted.

That immigration is comprehended in the term commerce has long been settled. In some of its features immigration is not fully covered by the four definitions of commerce which are cited above.

Immigration and emigration have here no legal distinction. Indeed, a sovereign power has greater right to prevent persons from entering her territory than to restrain them from leaving.

In the well-known Passenger cases, 7 Howard, 283, this court declared void, statutes of New York and Massachusetts

imposing a tax of one dollar and fifty cents on a shipmaster, for each passenger landed, "if for any one reason, because the law was a regulation of commerce." This decision was made after the case had been re-argued. The great mind of Mr. Daniel Webster and the astuteness of Mr. Rufus Choate, both of whom were counsel for the appellants, demonstrated clearly that persons, as well as property, are imports, and that persons are comprehended in the term commerce.

On page 405 of the opinion Mr. Justice McLean says:

"In a commercial sense, no just distinction can be made, as regards the law in question, between the transportation of merchandise and passengers. * * * Each is the subject of a commercial regulation by Congress."

And, on page 407:

"An import in its enlarged sense means any tax or tribute imposed by authority, and applies as well to a tax on persons as to a tax on merchandise. Any other construction would be an imputation on the intelligence of Congress."

In the Head Money cases, 112 U. S., 580, the facts being similar to the Passenger cases, the whole law was again reviewed. Mr. Justice Miller says, on page 591:

"That these statutes are a regulation of commerce is conceded."

On pages 591, 592, 593, the cases of Henderson *vs.* Mayor, 92 U. S., 259; Chy Lung *vs.* Freeman, 92 U. S., 275; People *vs.* Campagnie Generale Transatlantique, 107 U. S., 59, are quoted from in support of the proposition that immigration is commerce.*

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* Other authorities holding that immigration is commerce are Rorer on Interstate Law (1893), pp. 405, 406, and cases cited; Black, Constitutional Law, pp. 170, 171, 177, 178. Commerce Clause, Federal Constitution, pp. 192, 218; Bangor *vs.* Smith, 83 Maine, 426; Amer. & Eng. Encyclopedia of Law (1st ed.), vol. 9, p. 936.

The ruling of the supreme court of California is directly in point here. In Lin Sing *vs.* California, 20 Cal., 534, that court declares:

"1. The Federal Constitution has vested in the General Government the power to regulate commerce in all its branches; and this power extends to every species of commercial intercourse, and may be exercised upon persons as well as property.

"2. Commerce cannot be carried on without the agency of persons; and a tax, the effect of which is to diminish personal intercourse, is a tax on commerce. If the power to impose such tax is acknowledged—it being a sovereign power—no limitation can be affixed to its exercise and it may be so used as not only to diminish but to destroy commerce.

"3. Immigration, either temporary or permanent, is an ingredient of intercourse and traffic; and the power to regulate commerce implies the power to regulate, both as to persons and as to goods."

In McCall *vs.* California, 136 U. S., 104, a tax was sought to be imposed on a soliciting passenger agent. The agent's office was in Sacramento, California, and his business was to induce passengers bound for New York from California to go by way of Chicago, and thence to the East over the railroad which he represented.

This tax was declared void as violative of the commerce clause of the Constitution. We are unable to draw a distinction in principle between that case and the case at bar.

Two States have enacted laws identical with the Georgia law, to prevent the migration of the laboring population.

State *vs.* Moore, 113 N. C., 697, declares a law of North Carolina, imposing a tax of one thousand dollars on emigrant agents, to be void. It is true that an issue of uniformity entered into that case, because the law did not apply to the entire State. However, from the opinion as a whole, the court considered the law void for other and distinct reasons.

A statute of Alabama, imposing a tax of two hundred and

fifty dollars on this identical occupation, was held invalid by the supreme court of that State, in Joseph *vs.* Randolph, 71 Ala., 499. In the opinion under review that case is referred to in these words:

"We are aware that the supreme court of Alabama, in Joseph *vs.* Randolph, 71 Ala., 499, held an act similar to the one involved in the present case contrary to the interstate-commerce clause of the Constitution of the United States, but we cannot give our assent to the reasoning upon which that decision was based."

Record, p. 19.

Inasmuch as there is a direct conflict between these two decisions, and both being equal before this court, it has been deemed proper to cite the Alabama case at length. (The case of Joseph *vs.* Randolph, 71 Ala., 499, will be found in an appendix to this brief, on page 21. It will be the subject of further reference in the progress of this argument.)

The most anolagous law to the present one, ever construed by a Federal court, is the contract-labor law enacted by Congress. That law makes it penal to engage in the business of hiring or inducing foreign laborers to come to this country, by payment of passage or otherwise. It was passed to keep out foreign labor. This law seeks to keep the laborer from leaving. The underlying principle in each case is the same. The contract-labor law has been upheld, as a valid exercise by Congress of its exclusive power to regulate commerce.

U. S. *vs.* Craig, 28 Fed. Rep., 795, 798.

We have been unable to find any authority in line with the supreme court of Georgia. That court virtually admits that other tribunals hold differently to what it decides, as appears from the opinion of Mr. Justice Cobb. There it is said, in effect, that while individual members of this court may have held similar laws to be unconstitutional the court itself has not done so. (Record, p. 19.)

In the light of the foregoing authorities, it is submitted that commerce comprehends emigration, as well as traffic, intercourse, navigation, and transportation, and that a tax on an occupation connected with interstate traffic, intercourse, navigation, transportation, or emigration, is a tax on commerce among the States.

If, then, the removal of laborers beyond a State is emigration, and therefore commerce, it follows that a tax on an occupation connected therewith is a tax on commerce among the States, and beyond the power of the State to impose.

It cannot be contended that this business is too remotely connected with commerce to be protected by the commerce clause of the Constitution.

"Interstate commerce commonly begins with negotiations and contracts looking to transportation among the States."

Commerce Clause Federal Constitution, p. 61, and cases cited.

"The object of the commerce clause," says Mr. Justice Peckham, in Addystone Pipe Company *vs.* United States, 175 U. S., 227, "was to insure uniformity of regulation against conflicting and discriminating State legislation."

And in Bagg *vs.* Railroad Company, 109 N. C., 280, the commerce clause being under review, Avery, J., says:

"The test of constitutionality is involved in the inquiry whether its enforcement would tend to trammel the trade between citizens of different States or embarrass them in passing from one State to another."

That this law tends to trammel the trade between citizens of different States, and embarrasses them in passing from one State to another, is self-evident.

Finally, this clause should be liberally construed, to the end that sectional selfishness must have no part in this nation. No State should be allowed to obstruct national progress or individual prosperity, because a class of her popu-

lation cannot compete with other States. Through the commerce clause, as through no other agency, are we truly one nation and one people.

II.

It is next insisted that this law is in conflict with the fourteenth amendment, because—

(1.) It is an indirect effort to restrict the right of the citizen to move from one State to another, and abridges the privileges and immunities of the citizen.

(2.) It impairs the natural right of the laborer to labor; it is a tax on the laborer and is class legislation aimed entirely at laborers, and it applies to a class of laborers only, to wit, those who seek to labor beyond the State.

(3.) It imposes a tax of five hundred dollars, which is prohibitory in amount, on the person who hires laborers to work beyond the State and exempts the person who hires laborers to work within the State.

(1.) "The right of personal ingress or egress is a natural right, dependent on no express constitutional provision" (1 Blackstone, 134).

"Many of the most important fundamental rights are usually not declared at all in the organic law, but simply taken for granted."

The right of the citizen to go wherever he sees fit is comprehended by the guarantee of the fourteenth amendment that—

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

That a citizen cannot be taxed directly by a State, for the privilege of leaving the State, is well settled. In the Passenger cases, 7 Howard, 464, Mr. Justice Grier says:

"It is not left to the discretion of each State in the Union either to refuse a right of passage to passengers or property, through her territory, or to exact a duty for permission to exercise it."

In Joseph *vs.* Randolph, 71 Ala., 499–508, the right of personal liberty is fully considered, and the reasoning of that tribunal appears conclusive of this question.

Appendix, p. 21.

Does this tax operate, by indirection, to hinder the free egress of the citizen?

"In whatever language a statute may be framed, its purpose and its constitutional validity must be determined by its natural and reasonable effect."

Henderson *vs.* Mayor, 92 U. S., 259.

And in the Passenger cases, 7 Howard, 283, Mr. Justice Grier says, on page 458:

"It is a just and well-settled doctrine established by this court, that a State cannot do that indirectly which she is forbidden to do directly."

It is also settled by the decisions of this court that the constitutionality of a State tax is to be determined, not by the form of the agency through which it is to be collected, but by the subject upon which the burden is actually laid.

Commerce Clause, Federal Constitution, p. 200.

So the supreme court of California (People *vs.* California, 34 Cal., 492), in holding unconstitutional a law of that State, which made it penal for an agent to sell tickets or contracts for passage on vessels leaving San Francisco for any port without the State, without placing a stamp, to be furnished by the State, on such tickets, used this language:

"Where the State has not the power, by means of direct legislation, to regulate the intercourse of her citizens with

other States, it cannot accomplish by indirect methods what it is forbidden to do directly" (citing numerous authorities on page 495).

In Crandall *vs.* Nevada, 6 Wallace, 35, a capitation tax of one dollar on transportation companies, for each passenger carried beyond the State, was held void as a tax on the passenger.

And in Chy Lung *vs.* Freeman, 92 U. S., 275, a statute of California, providing that the commissioners of immigration should require a bond of certain immigrants from China, was declared void in these words:

"But the features of the statute are such as to show very clearly that the purpose is to extort money from a large class of passengers, or to prevent their immigration to California altogether."

"A constitutional right conferred by the Federal Constitution cannot be taxed by the State, either directly or indirectly, because the power to tax carries with it the power to defeat and render useless, if not to destroy."

McCullough *vs.* Maryland, 4 Wheat., 316 (3).

The limitations upon State sovereignty, by the superior sovereignty of the United States, is fully defined on pages 425–431 of the decision last cited.

Tested by these rules, this law cannot stand.

It is evident that the statute under review is an indirect effort to impose a burden on laborers, to prevent them from leaving the State.

Nor does it matter that the tax is not imposed directly upon the laborer. It needs no argument to show that it must finally be paid by the laborer for the privilege of exercising the natural right to labor in another State.

(2.) This law should be pronounced void, as a tax on a special class of laborers. The elements of discrimination against particular members of this class are at once apparent.

The occupation sought to be taxed is that of "emigrant agent." But the only emigrant agents brought under the operation of the law are those who seek to hire laborers for employment beyond the State. All other classes of the community may be removed *ad libitum*. Even laborers may be removed for all purposes, except to be employed without the State. Laborers who seek to labor in another State are thus placed at a disadvantage.

In Parrott's Chinese case, 6 Sawyer, 349, a law of California making it an offense for any corporation to employ Chinese, was declared violative of the fourteenth amendment. We quote the portions of the judgment immediately bearing upon this case:

"7. The privileges and immunities * * * are all those rights which are fundamental, and of right belong to citizens of all free governments; and among them is the right to labor, and to pursue any lawful employment in a lawful manner.

"8. Property is everything which has an exchangeable value. Labor is property, and the right to make it available is next in importance to the right to life and liberty."

Low *vs.* Rees, 41 Neb., 127, holds a law, providing that a day's work for all classes of laborers, except farm laborers, shall be eight hours, to be class legislation, violative of the fourteenth amendment. Ritchie *vs.* Illinois, 155 Ill., 98, adjudged a law of that State, prohibiting the employment of females in factories for more than eight hours a day, to be contrary to the Constitution, in these words:

"1. The right to labor or employ labor, and make contracts in respect thereto, is both a liberty and a property right and is included in the guarantee of the Constitution, that no person shall be deprived of life, liberty or property without due process of law.

"2. While the right to contract may be subject to limitations growing out of the duties which the individual owes to society, the power of the legislature to limit such

right must rest upon some reasonable basis, and cannot be arbitrarily exercised."

Limestone Company *vs.* Fagley *et al.*, 187 Penn., 193, and Fraser *vs.* McConway & Torley Co., 82 Fed. Rep., 257, are cases where a law of Pennsylvania, imposing on every employer of foreign born, unnaturalized, male persons over 21 years of age a tax of three cents a day, for each day of employment, was held to be in conflict with the fourteenth amendment. On page 260 of the last-cited case Mr. Justice Acheson quotes from the Railroad Tax cases, 13 Fed. Rep., 722, 733, as follows:

"Unequal exactions in every form, or under any pretense, are absolutely forbidden, and of course unequal taxation, for it is usually in that form that the oppressive burdens are laid."

For further definition of "privileges and immunities" reference is made to the cases of Blake *vs.* McClung, 172 U. S., 248, and Stockton Laundry case, 26 Fed. Rep., 613, 614.

(3.) Very similar to the objection urged that this law is class legislation because it discriminates against laborers, is the objection that it is an arbitrary tax on certain agents engaged in hiring laborers, and that it does not apply to all agents following that occupation. It is observed that persons hiring laborers for employment *within* the State are not taxed, while those hiring laborers for employment *without* the State must pay a tax, which is nothing less than prohibitory.

While the State may exercise great latitude in the classification of subjects for taxation, these classifications must have some reasonable foundation. Discriminations based on location or residence have always been held void.

In Commonwealth *vs.* Snyder, 182 Penn., 630, an act of the legislature of Pennsylvania imposing a heavy license

fee upon peddlers in Perry county, but providing that the act shall not apply to peddlers dealing exclusively with the merchants of said county, nor to merchants residing and having a regular place of business therein, nor to the sale by citizens of said county, of products of their own growth or manufacture, was declared violative of the Constitution On page 633 Mr. Justice Williams says:

"What this bill undertakes to do is to * * * secure to residents a practical monopoly of the trade of the county. This is so evidently a violation of the Constitution of the United States that it is unnecessary to consider any other question. * * * It is a barrier built by the State of Pennsylvania about a single county to exclude therefrom the citizens of the rest of the Commonwealth and of the rest of the United States for the benefit of merchants living within the inclosure. This cannot be done."

Citing Welton *vs.* Missouri, 91 U. S., 275.

Sayre Borough *vs.* Phillips, 148 Penn., 482, is also a case where a discriminating peddling ordinance was held void, in these words:

"Such regulations must be directed against the business or practice of peddling and not against some of the persons who may be engaged in it. If a statute or municipal ordinance is so framed as to discriminate between the persons engaged in the same trade or pursuit, such statute or ordinance is not a police but a trade regulation, and therefore invalid."

Says this court in Gulf, Colorado & Santa Fé R'y *vs.* Ellis, 165 U. S., 151:

"The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the fourteenth amendment, and in all cases it must appear not merely that a classification has been made, but also that it is based upon some reasonable ground—something which bears a just and proper relation to the attempted classification, and is not a mere arbitrary selection."

III.

The final objection urged to this law is that it is a denial to the non-resident of the rights and privileges allowed the citizens of Georgia.

Citizens of each State are guaranteed the right, under article 4, section 2, of the Federal Constitution, to buy and sell commodities in any other State, either personally or through agents, upon the same terms and subject to the same regulations as the citizens of such State. The hiring of labor is the same, in principle, as the purchase of commodities.

Under this law the employer in another State cannot obtain labor on equal terms with the resident employer.

Says Judge Cooley:

> "The Constitution secures in each State to the citizens of all the other States the right * * * to acquire and hold property, * * * and the right to be exempt, in property and person, from taxes or burdens which the property, or persons, of citizens of the same State are not subject to."
>
> Cooley, Const. Limitations, 6th edition, p. 490.
>
> *Id.*, p. 597, citing 71 Ala., p. 499.

This court has so repeatedly held invalid, State laws imposing a tax upon the sale of, or otherwise discriminating against, commodities or products of other States, that discussion of the subject would be fruitless.

Welton *vs.* Missouri, 91 U. S., 275.
Walling *vs.* Michigan, 116 U. S., 446.
Minnesota *vs.* Barber, 136 U. S., 313.
Brimmer *vs.* Rebman, 138 U. S., 78.
Voight *vs.* Wright, 141 U. S., 62.

In conclusion: The amount of the tax, and all its features, make the real object of this statute only too manifest.

It is not an effort to raise revenue. The legislature sought to create a labor monopoly for the benefit of employers in Georgia.

From the standpoint of the Georgia employer it is a most salutary law. From the standpoint of the laborer (who is most directly concerned), of the non-resident employer, of the commercial interests of the United States, and in the light of every principle of fairness and justice, it is a most vicious law.

It is a law utterly inconsistent with the traditions and institutions of this Government.

It is a law in conflict with both the spirit and the letter of the Federal Constitution.

JAMES DAVISON,

Counsel for Plaintiff in Error.

APPENDIX.

JOSEPH *vs.* RANDOLPH, 71 Ala., 499–508.

Decided December, 1882.

Action for money had and received for plaintiff's use.

1. (Right of transit through the State guaranteed to citizens by Constitution.)—Under constitutional provisions, both State and Federal, every citizen of the United States and of the several States of the Union have, as an attribute of personal liberty, the right of free egress from and transit through the State unless restrained by due course of law, and this right is subject only to such legislative regulations as may be imposed by the exercise of the police power of the State, or as may remotely affect it in the legitimate exercise of the power of State taxation.

2. (Constitutionality of statutes; how determined.)—A statute is to be interpreted according to the intention of the legislature, apparent on its face, and its constitutionality must be determined by its natural and reasonable effect.

3. (Same: Power of legislature to regulate constitutional right.)—No principle of construction is sounder than the common-sense and cardinal rule that "what cannot be done directly cannot be done indirectly," and hence a constitutional right, though subject to regulation, cannot be destroyed or impaired under the device or guise of being regulated.

4. (Act of January 22, 1879, unconstitutional.)—The act of January 22, 1879, providing that "no person, whether for himself or for other persons, shall be permitted to employ, engage, contract or in any way induce la-

borers to leave the counties designated in the act, for the purpose of removing said laborers from this State, without first paying to each of said counties in which such person shall operate a license tax of two hundred and fifty dollars, such license tax to be collected as other license taxes," etc., and declaring a violation of its provisions a misdemeanor, being an indirect tax upon the citizen's right of free egress from the State, and operating to hinder the exercise of his personal liberty, and to seriously impair his right to emigrate, is violative of both the State and Federal constitutions, and is void.

5. (Same: Cannot be sustained as a legitimate exercise of the police power of the State.)—Said act has none of the characteristics of a law designed to provide regulations promotive of domestic order, morals, health, or safety, or kindred subjects, properly falling within the purview of domestic police, and hence it cannot be sustained as a legitimate exercise of the police power of the State.

Opinion of the Court.

SOMERVILLE, *J.:*

The question presented for decision is a constitutional one, involving the validity of an act of the General Assembly of this State entitled "An act to require a person who employs or in any way engages laborers in the counties of Perry, Dallas, and other counties therein named, for the purpose of removing said laborers from the State, to pay a license tax," which act as originally approved on January 22, 1879, designated the amount of tax as one hundred dollars. It was amended December 8, 1880, so as to increase this license to two hundred and fifty dollars.

(Acts 1880–'1, p. 162.)

It provides that no person, whether through himself or through other persons, shall be permitted to employ, engage, contract, or in any other way induce laborers to leave the

counties of Dallas, Perry, etc., for the purpose of removing said laborers from this State, without first paying to each of said counties in which such person shall operate a tax of two hundred and fifty dollars, such tax to be collected as other license taxes.

It is insisted, among other things, that the plain intent and natural effect of this statute is to tax by indirection the constitutional right of the citizen to have free egress at all seasonable times by emigration from the State.

If this view be correct, it is clear that the validity of the act cannot be sustained. There can be no denial of the general proposition that every citizen of the United States and of each State of the Union, as an attribute of personal liberty, has the right ordinarily of free transit from or through the territory of any State.

This freedom of egress or ingress is guaranteed to all by the clearest implications of the Federal as well as of the State constitution. It has been said that even in England, whence our system of jurisprudence was derived, the right to personal liberty did not depend on any express statute, but it was the birthright of every freeman.

Cooley on Constitutional Limitations, p. 342.

This right was said by Blackstone to consist in the power of locomotion—of changing situation or of removing one's person to whatsoever place one's inclination may direct, without imprisonment or restraint, unless by due process of law.

1 Blackstone, p. 134.

For its summary vindication when illegally interfered with the writ of *habeas corpus* had its origin and was established with Magna Charta.

Hurd on *Habeas Corpus*, p. 143.

This liberty of interstate transit, thus based on the assertion of personal liberty, is referable to many clauses of the

Federal Constitution. In Ward *vs* Maryland, 12 Wallace, 418, 430, it was classed by Mr. Justice Clifford as one of the privileges and immunities of the citizens of the several States guaranteed to the citizens of each State by article 4, section 2, of the Constitution of the United States.

In the Passenger cases (7 Howard, 283) it was recognized by a majority of the Supreme Court of the United States as a right protected by the commerce clause of the Federal Constitution from hostile State legislation, and its existence was admitted by all and denied by none. Mr. Justice Wayne said that no State had the right to tax a foreigner or person for coming into one of the United States; that, he contended, would be a tax or revenue act in the nature of a regulation of commerce, and as such violative of the Federal Constitution.

Passenger cases, *supra*, p. 420.

In Crandall *vs.* Nevada, 6 Wallace, 35, the entire court concurred in the view that a capitation tax of one dollar imposed by the legislature of Nevada upon every person leaving the State as a passenger by railroad, stage coach, or other mode of conveyance was unconstitutional and void, the reason being that it infringed the natural right of every citizen to have free ingress and egress to and from and through the States and Territories composing a common, general government, a right fully recognized by all the judges as having an undoubted existence, although they differed as to the particular grounds upon which it could be rested.

Rorer on Interstate Law, p. 315.

Our present State constitution contains a recognition of the right under discussion that emigration shall not be prohibited in the fundamental maxim that "All men are endowed by their Creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness."

Constitution of 1875, secs. 1, 35.

The right of every citizen or person to enjoy free egress from or transit through the State is, in our opinion, an undoubted constitutional right. The framers of the Federal Constitution clearly intended that personal intercourse between the States should be, so far as practicable, as free as the transit of the ocean and as unmolested as the commerce of the public seas. It must forever remain unfettered and free, save subject to such regulations as may be imposed by Congress or the police power of the States or as it may be remotely affected by the legitimate exercise of the power of State taxation.

Let us examine this act so as to test it in the light of the foregoing propositions.

A legislative act is to be interpreted according to the intention of the legislature apparent on its face. So the purpose and constitutionality of a statute, in whatever way it may be framed, must be determined by its natural and reasonable effect.

Hudson *vs.* Mayor, 92 U. S., 259.
Chy Lung *vs.* Freeman, *id.*, 275.

Considering the statute now under consideration according to this rule, it cannot be sustained as an exercise of the police power of the State. This power is generally said to extend to the making of regulations promotive of domestic order, morals, health, and safety, having its just foundation in the public right of self-defense and its origin in the maxim "*Sic utere tuo ut alienum non lædas.*"

Thorpe *vs.* Rutland R. R. Co., 27 Vermont, 149.
American Telegraph Co. *vs.* Western Union Telegraph Company, 67 Ala., 26.

This law has none of the characteristics of a law designed to regulate these or kindred subjects which properly fall within the purview of domestic police. There can be nothing so injurious or offensive in the act of hiring a sin-

gle unemployed laborer as to require police regulation by the State.

* * * If we could see that the legislative purpose was merely to impose a license upon the persons engaged in the business or occupation of hiring persons to leave the State, we would not be justified in declaring the law violative of the constitution because it incidentally affected the right of free egress from the State.

A constitutional right is often affected in this way without a repugnancy which will vitiate the tax. In Osborne *vs.* Mobile, 16 Wallace, 479, it was accordingly held that an annual license tax imposed by the city of Mobile on an express company engaged in that State in carrying on interstate commerce was not repugnant to the Constitution as a regulation of commerce. So a tax imposed by the legislature of Pennsylvania upon the gross receipts of railroad and canal companies doing business between that and other States has been sustained as a proper exercise of the taxing power.

State tax on railroad gross receipts, 15 Wallace, 284.

A constitutional right, however, conferred by the Federal Constitution as such cannot be taxed by the States, either directly or indirectly, because the power to tax carries with it the power to defeat and render useless, if not to destroy.

Pollard *vs.* State, 65 Ala., 628.

McCullough *vs.* Maryland, 4 Wheaton, 316.

A law, as we have seen, would certainly be void which exacted tribute of a citizen as the price of crossing a State line.

Does the tax in question operate manifestly as a tax by indirection upon the right of the citizen to leave the State, or does it so burden this right as to effectually impair it?

No principle of construction is sounder than the common

sense and cardinal rule that "What cannot be done directly cannot be done indirectly."

Ex parte Hadley, 68 Ala., 303.

Cummings *vs.* Missouri, 4 Wallace, 277.

If the law should act upon any other theory, it would subject itself to the just challenge of catching at shadows and not substance.

Hence a constitutional right, though subject to regulation, cannot be impaired or destroyed under the device or guise of being regulated.

South & North Ala. R. R. *vs.* Winn, 65 Ala., 193.

It is easy to see the application of this principle in construing the statute now under review. Every person, including every laborer, has the right of egress from the State—the right to emigrate at his option and in the unobstructed exercise of his free will. He has, therefore, the clear right to contract to exercise it, because it may become the necessary and only means for its successful exercise. If the right itself exists and is lawful, it cannot become unlawful to agree to exercise it.

It may be said, however, that no license is required of the laborer to contract, but only of any one else to contract with him.

The fallacy of the suggestion is apparent, as it takes at least two persons to make a contract. A law forbidding the purchase of any commodity is in effect a law to prohibit its sale. In Ward *vs.* Maryland, 12 Wheaton, 419, it was said that a tax on the sale of an article imported for sale was a tax on the article itself.

So it was decided in Welton *vs.* Missouri, 91 U. S., 275, that a license tax required for the sale of goods was in effect a tax on the goods themselves. The license in that case was sought to be sustained as a tax upon the calling or occupation. In like manner a tax upon passenger carriers of a

specific sum for each passenger transported, has been adjudged to be a tax upon the passengers.

Passenger cases, 7 Howard, 283.

Crandall *vs.* Nevada, 6 Wallace, 35.

The legislative intent, then, is plain upon the face of the act. Its purpose is to prevent free egress of laborers, from the counties designated, out of the State.

There is no tax upon the right of hiring or inducing them to go elsewhere, but a tax of $250, in the form of a license, is exacted of every one who makes a contract with a laborer or otherwise offers him an inducement to leave the State, whether for the service of the principal employer or for that of some other person. The license required might thus amount to twice or three times the annual value of the hireling's labor.

It requires no great draft upon the judicial knowledge to declare that such a tax is in its nature prohibitory, and its natural effect and evident purpose is to seriously clog and impair the laborer's right of free emigration.

Ex parte Brennan, 30 Ala., 461.

Construing the act under consideration by the test of these principles, we do not see how it can be sustained. It must be pronounced void as an indirect tax upon the citizen's right of free egress from the State, operating to hinder the exercise of his personal liberty and seriously impair his freedom of emigration.

Webber *vs.* Virginia, 103 U. S., 344.

Vines *vs.* State, 67 Ala., 73.

Passenger cases, *supra.*

There are other objections urged to this act besides the one we have above considered. It is ably assailed as a species of vicious class legislation applicable alone to laborers and to no other persons in the community.

It is also attacked as being repugnant to the fourteenth amendment of the Federal Constitution, the ground of objection being that it is a denial by the State to laborers, as a class, of the equal protection of the laws.

What force there may be in these objections we need not consider, as it is rendered entirely unnecessary in view of the conclusions to which we have come, pronouncing the law void for other and distinct reasons.

The judgment is reversed and the case remanded.

Office Supreme Court U. S.
OCT 18 1900
JAMES H. MCKENNEY, CLERK

No. 287.

Sup. Ct. of Davison, Law Pr.

Filed Oct. 18, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 287.

R. A. WILLIAMS, PLAINTIFF IN ERROR,

vs.

EDGAR FEARS, SHERIFF, AND R. B. AYCOCK, JAILER.

IN ERROR TO THE SUPREME COURT OF GEORGIA.

SUPPLEMENTAL BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

JAMES DAVISON,
Counsel for Plaintiff in Error.

(17,771.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 10-18-1900

IN THE

Supreme Court of the United States.

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R. A. WILLIAMS, PLAINTIFF IN ERROR,

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IN ERROR TO THE SUPREME COURT OF GEORGIA.

SUPPLEMENTAL BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

It becomes proper for counsel to file an additional brief in this case to review the cases of (1) Osborne *vs.* Mobile, 16 Wallace, 499; (2) Wiggins Ferry Co. *vs.* East St. Louis, 107 U. S., 365, and (3) Ficklen *vs.* Shelby County, 145 U. S., 1, these three cases being cited in the brief of counsel for the defendants in error.

These cases were not cited in the court below, and the brief of counsel for defendants is the first information to

counsel for plaintiff that they would be relied upon in this argument.

1. Osborne *vs.* Mobile and Wiggins Ferry Co. *vs.* East St. Louis are cases where a license was required as a preliminary to carrying on a business. The earlier cases distinguished between a license as a preliminary to conducting a business and taxation on the occupation of carrying it on.

The following cases do not seem to be in harmony with these cases:

Moran *vs.* New Orleans, 112 U. S., 69.
Pickert *vs.* Pullman Co., 117 U. S., 34.
Steamship Co. *vs.* Pennsylvania, 122 U. S., 326.
Leloup *vs.* Mobile, 127 U. S., 641.
Harman *vs.* Chicago, 147 U. S., 396.

The progress of judicial decisions on this question is stated in Commerce Clause Federal Constitution, pp. 268–273.

But this discussion is foreign to this case. The question is, Can the State impose a tax on an *occupation* connected with interstate commerce? The power to impose a license as a preliminary to engaging in a business is not an issue here. This is admitted by part II of defendants' brief and by the opinion of Mr. Justice Cobb, on page 15 of the printed record.

It may be asserted without fear of contradiction that no tax imposed by a State on an *occupation* connected with interstate commerce has ever been upheld by this court.

2. The case of Ficklen *vs.* Shelby County, 145 U. S., 1, has the force of a perfectly sound and correct proposition of law, aside from the fact that it becomes such by the declaration

of this court. However, that case is really authority against the defendants. What is decided is:

"Where a resident citizen engages in a general business subject to a particular tax, the fact that the business done chances to consist, for the time being, wholly or partially in negotiating sales between resident and non-resident merchants * * * does not necessarily involve the taxation of interstate commerce."

The business there taxed was a general commission business. The interstate feature was an incident of the tax, not the object of the law. In this case the only business of hiring taxed, is hiring for transportation and employment *beyond* the State. Taxation on interstate commerce is the *object* of the act. If the Ficklen case had imposed a tax on brokers acting for *non-resident* principals alone, it would be a parallel case to this; or if the Georgia legislature had imposed a tax on all employment agencies, it would not be repugnant to the commerce clause.

That the Ficklen case can avail these defendants nothing is made absolutely clear by these quotations. On page 20 Mr. Chief Justice Fuller uses this language:

"Interstate commerce may be legitimately incidentally affected by State laws, when they, among other things, provide for the imposition of taxes upon pefsons residing in the State, or belonging to its population, and upon avocations and employments pursued therein, *not directly connected with foreign or interstate commerce.*"

On page 21 the Chief Justice continues:

"They were thereby authorized to do any and all kinds of commission business. * * * Although their principals

happened, during 1887, as to the one party, to be wholly non-resident, and as to the other largely such, this fact might have been otherwise, *as their business was not confined to transactions for non-residents.*"

In Brenan *vs.* Titusville, 153 U. S., on page 306, Mr. Justice Brewer, reviewing Ficklen *vs.* Shelby County, says:

"The case of Ficklen *vs.* Shelby County is no departure from the rule of decision so firmly established by the prior cases. At least, no departure was intended, though, as shown by the division in the court, and the dissenting opinion of Mr. Justice Harlan, the case was near the boundary line of the State's power."

And again, on page 308, these words of the Chief Justice, used in the Ficklen case, are quoted, that—

"No State can levy a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived therefrom, *or on the occupation or business of carrying it on.*"

This may now be accepted as a legal axiom.

JAMES DAVISON,
Counsel for Plaintiff in Error.

GREENESBORO, GEORGIA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 287.

R. A. WILLIAMS, Plaintiff in Error.

vs.

EDGAR FEARS, Sheriff, and R. B. AYCOCK, Jailer, Defendants in Error.

In Error to the Supreme Court of Georgia.

BRIEF OF J. M. TERRELL, OF COUNSEL FOR THE STATE OF GEORGIA.

STATEMENT OF THE CASE.

On January 13th, 1900, a warrant was issued by the County Court of Morgan County, Georgia, based upon an affidavit made by L. T. Penick, Tax Collector of that County, charging the plaintiff in error, R. A. Williams, with the offense of acting as an Emigrant Agent in Morgan County without a license. The warrant was duly executed by the proper officer of that county, and Williams was arrested thereunder and placed in the county jail, upon his failure to give bond, pending his trial before the County Court. While thus being held he made application to the Judge of the Superior Court of that County for a writ of *habeas corpus*, alleging, amongst other things, that the warrant under which he was arrested charged him with violating the General Tax Act of 1898, which imposes "upon each emigrant agent or employee of such agent

doing business in this State the sum of five hundred dollars for each county in which such business is conducted," and that this provision of the General Tax Act was in conflict with the Interstate Commerce Clause of the U. S. Constitution, also paragraph 5, section 9, article 1, and also paragraph 1, section 2 of article 4, and also with the Fourteenth amendment of the Federal Constitution. The writ of *habeas corpus* was duly issued, and upon the return thereof the questions arising thereunder were heard and determined by the Court, and Williams was remanded to the custody of the officer having him in charge to be held until discharged by due process of law. To this ruling of the Superior Court Williams excepted and carried the case to the Supreme Court of Georgia, where on the 11th day of April, 1900, a judgment was rendered affirming the judgment of the Superior Court.

EXTRACTS FROM THE GEORGIA LAWS.

The title of the General Tax Act of 1898 is as follows: "An Act to levy and collect a tax for the support of the State government and the public institutions; for educational purposes in instructing children in the elementary branches of an English education only; to pay the interest on the public debt; and to pay maimed Confederate soldiers and widows of Confederate soldiers such amounts as are allowed them by law for each of the fiscal years 1899 and 1900; to prescribe what persons, professions and property are liable to taxation; to prescribe the methods of collecting and receiving said taxes; to prescribe the method of ascertaining the property of the State subject to taxation; to prescribe additional questions to be propounded to taxpayers, and to provide penalties and forfeitures for non-payment of taxes; to prescribe how the oath of taxpayers shall be administered, and provide penalties for violation thereof, and for other purposes."

The 1, 2, 3, 4, 5, 6, 7, 8 and 9 paragraphs of section 2 levy an occupation tax upon lawyers, doctors, photographers, auctioneers, keepers of pool and billard tables, traveling vendors of patent or proprietary medicines, special nostrums, jewelry, paper, soap, or other merchandise, local insurance agents, etc. Paragraph 10 is as follows:

"Upon each emigrant agent, or employer or employee of such agent, doing business in this State, the sum of five hundred dollars for each county in which the business is conducted."

Section 4 of the General Tax Act is as follows:

"Be it further enacted by the authority aforesaid, That the taxes provided for in paragraphs 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of section 2 of this Act shall be paid in full for the fiscal years for which they are levied to the tax-collectors of the counties where such vocations are carried on at the time of commencing to do business specified in said paragraphs. Before any person taxed by paragraphs 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of section 2 of this Act shall be authorized to carry on said business they shall go before the Ordinary of the county in which they propose to do business and register their names, places of business, and at the same time pay their taxes to the tax-collector; and it shall be the duty of said Ordinary to immediately notify the Comptroller-General and the tax-collector. Any person failing to register with the Ordinary, or, having registered, failing to pay the tax as herein required, shall be liable to indictment for misdemeanor, and, on conviction, shall be fined not less than double the tax, or be imprisoned as prescribed by section 1039 of volume 3 of the Code of 1895, or both, in the discretion of the court. One-half of said fine shall be applied to the payment of the tax, and the

other to the fund of fines and forfeitures for use of officers of court."

BRIEF OF ARGUMENT.

I.

As construed by the Supreme Court of Georgia, the term "emigrant agent," as used in the General Tax Act of 1898, means a person engaged in hiring laborers in Georgia to be employed beyond the limits of that State.—Printed record, page 13. There is nothing in the record to show that Williams, the plaintiff in error, was not a citizen of Georgia; the presumption, therefore is that he was a citizen and resident of Georgia.

II.

The question presented by the record is whether paragraph 10 of section 2 of the General Tax Act, which levies an occupation tax of $500 per annum upon emigrant agents contravenes the United States Constitution, and for that reason, so far as the same affects the plaintiff in error, is void. The Supreme Court of Georgia held that there was no conflict, and the Court, through Mr. Justice Cobb, discussed in an able opinion every phase of the question.—P. R., pages 13 to 21. The Court also reviewed and affirmed the decision of the Supreme Court of Georgia in a somewhat similar case in 59 Ga. 535.

III.

The provision of the tax act in question does not regulate or interfere with interstate commerce. It is nothing more than the exercise of the taxing power of the State in imposing upon the occupation of the citizen a tax, and is

not a regulation of or restriction of any business which is properly comprehended within the terms "commerce among the States." The argument of Mr. Justice Cobb on this question ably and clearly states the law, and the authorities cited by him fully sustain the position.—P. R., pages 16 to 19.

The courts and text writers have uniformly upheld such an exercise of the taxing power to be constitutional. The case of Joseph V. Randolph, 71 Ala. 599, which was relied upon very largely by the plaintiff in error when this case was before the Supreme Court of Georgia, may be easily distinguished from this case. The question there involved the police and not the taxing power. The opinion of the Court by Mr. Justice Somerville recognizes the correctness of this position in the following language, on page 507 of 71 Ala.: "If we could see that the legislative purpose was merely to impose a license tax upon persons engaged in the business or occupation of hiring persons to leave the State, we would not be justified in declaring the law violative of the Constitution because it incidentally affected the right of free egress from the State. A constitutional right is often affected in this way by the taxing power, without a repugnancy which will vitiate the tax."

IV.

If the term "interstate commerce" includes such a business as that of an emigrant agent, which is not conceded, then paragraph 10 of the Tax Act of 1898 would still be constitutional.

In the case of Osborn *v.* Mobile, 16 Wall 499, where the Southern Express Company, a Georgia corporation doing business in Mobile, Alabama, contested the constitutionality of an ordinance of that city, which prescribed

that every express company doing business in that city, and having a business extending beyond the limits of the State, should pay an annual license of $500, which should be deemed a first grade license; that every company doing business within the limits of the State should take out a license called a second grade license, and pay $100, and that every company doing business within the city should take out a third grade license and pay therefor $50, this Court held that the ordinance was not repugnant to the Constitution as a regulation of interstate commerce. In delivering the opinion of the Court, Mr. Chief Justice Chase says, on page 482:

"But it is not necessary to resort to the principles maintained in these cases for the decision of the case now before us. It comes directly within the rules laid down in the case relating to the tax upon the gross receipts of railroads. In that case we said: 'It is not everything that affects commerce that amounts to a regulation of it within the meaning of the Constitution.' We admitted that the 'ultimate effect' of the tax on the gross receipts might 'be to increase the cost of transportation,' but we held that the right to tax gross receipts, though derived in part from interstate transportation, was within the general 'authority of the States to tax persons, property, business or occupations within their limits.' The license tax in the present case was upon a business carried on in the city of Mobile. The business license included transportation beyond the limits of the State, or rather the making of contracts, within the State, for such transportation beyond it. It was with reference to this feature of the business that the tax was, in part, imposed; but it was no more a tax upon interstate commerce than a general tax on drayage would be because the licensed drayman might sometimes be employed in hauling goods to vessels to be transported beyond the limits of the State."

In the case of Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365, this court sustained as constitutional the charter and an ordinance thereunder imposing a license fee upon the keepers of ferries living in the State for boats owned by them and used in ferrying passengers and goods from a landing in the State, across a navigable river, to a landing in another State. In discussing the question Mr. Justice Woods, speaking for the Court, on page 373, says:

"The levying of a tax upon vessels or other water-craft or the exaction of a license fee by the State within which the property subject to the exaction has its *situs*, is not a regulation of commerce within the meaning of the Constitution of the United States. Gibbons v. Ogden, 9 Wheat. 1; Passenger Cases, 7 How. 283; Morgan v. Parham, 16 Wall 471. * * * * In all the cases just cited the right of a State to tax a ship owned by one of her citizens and having its *situs* within a State, although used in foreign commerce or in commerce between the States, was distinctly recognized. Thus, in Passenger Cases, it was said by Mr. Justice McLean; 'A State cannot regulate foreign commerce but it may do many things which more or less affect it. It may tax a ship or other vessel used in commerce, the same as other property owned by its citizens. A State may tax the stages in which the mail is transported, but this does not regulate the conveyance of the mail any more than taxing a ship regulates commerce, and yet, in both instances, the tax on the property in some degree affects its use.'"

In Ficklen v. Shelby county, 145 U. S. 1, this Court sustained an Act of the Tennessee Legislature imposing a business tax upon brokers making sales on behalf of principals residing in other States. The language used by Mr. Chief Justice Fuller, on page 21, is applicable to the case at bar, and indicates clearly that it is perfectly competent for a State legislature in the exercise of its taxing power to impose the occupation tax in question:

"No doubt can be entertained of the right of a State legislature to tax trades, professions and occupations, in the absence of inhibition in the State Constitution in that regard; and where a resident citizen engages in general business subject to a particular tax, the fact that the business done chances to consist, for the time being, wholly or partially in negotiating sales between resident and non-resident merchants, of goods situated in another State, does not necessarily involve the taxation of interstate commerce, forbidden by the Constitution."

V.

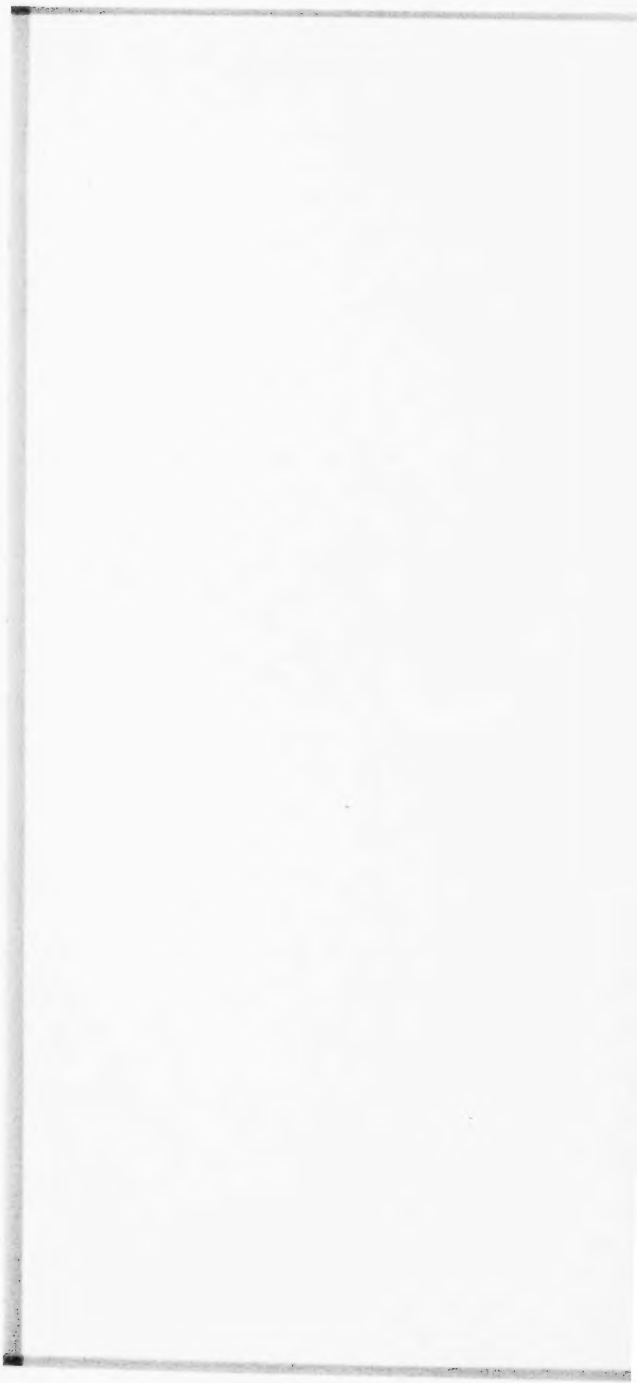
The contention that the provision of the Tax Act in question is contrary to other paragraphs of the Constitution and to the Fourteenth Amendment is not well founded, as will appear by reference to the authorities above cited. The Act does not in the slightest degree impair the rights of the citizen, neither does it impose a tax upon his right to leave the State, neither does it deny to any person the equal protection of the laws. The reasoning of Judge Bleckley in the case of Shepperd *v.* Commissioners, 59 Ga., on page 536, and quoted by Mr. Justice Cobb on pages 19 and 20 of the printed record, fully sustains this position. The following authorities will be found in point: New York *v.* Miln, 11 Peters 102; Slaughter House Cases, 16 Wall. 63; License Cases, 5 How. 504; Passenger Cases, 7 How. 283; License Tax Cases, 5 Wall. 471; Crandall *v.* Nevada, 6 Wall. 35.

VI.

No question was raised in the Georgia courts as to the amount of the tax being excessive or prohibitory, and the record presents no such question.

J. M. TERRELL,
Of Counsel for Defendants in Error.

Atlanta, Ga.



Supreme Court of the United States.

No. 287.—October Term, 1900.

R. A. Williams, Plaintiff in Error, vs. Edgar Fears, Sheriff, and R. B. Aycock, Jailer. } In error to the Supreme Court of the State of Georgia.

[December 10, 1900.]

R. A. Williams was arrested on a warrant issued by the county court of Morgan County, Georgia, and placed in the county jail on his failure to give bond pending his trial. Thereupon he made application to the judge of the superior court within and for that county for a writ of *habeas corpus* by petition alleging that the warrant under which he was arrested charged him with a violation of the tenth paragraph of section two of the General Tax Act of Georgia, of 1898, and that his restraint was illegal because that part of the act was in conflict with clause three of section eight, and with clause five of section nine, of article one, and with section two of article four, of the Constitution of the United States; and also with the Fourteenth Amendment. The writ of *habeas corpus* was duly issued and the application heard on the return thereto, which resulted in the denial of the petition by the superior court, and the remanding of Williams to custody. The case was then carried to the Supreme Court of Georgia, where, on April 11, 1900, judgment was rendered affirming the judgment of the superior court. 35 S. E. 699.

The title of the General Tax Act of 1898, (Georgia Laws 1898, p. 21,) read thus:

"An act to levy and collect a tax for the support of the State government and the public institutions; for educational purposes in instructing children in the elementary branches of an English education only; to pay the interest on the public debt, and to pay maimed Confederate soldiers and widows of Confederate soldiers such amounts as are allowed them by law for each of the fiscal years eighteen hundred and ninety-nine and nineteen hundred; to prescribe what persons, professions and property are liable to taxation; to prescribe the methods of collecting and receiving said taxes; to prescribe the method of ascertaining the property of the State subject to taxation; to prescribe additional questions to be propounded to taxpayers, and to provide penalties and forfeitures for non-payment of taxes; to prescribe how the oath of taxpayers shall be administered, and provide penalties for violation thereof, and for other purposes."

Section 2 provided "that in addition to the ad valorem tax on real estate and personal property as required by the constitution and provided

for in the preceding section, the following specific taxes shall be levied and collected for each of said fiscal years eighteen hundred and ninety-nine and nineteen hundred:"

Then followed paragraphs imposing poll taxes, and taxes on lawyers, doctors, photographers, auctioneers, keepers of pool and billiard tables, traveling vendors of patent or proprietary medicines, special nostrums, jewelry, paper, soap, or other merchandise, local insurance agents, etc.

Paragraph 10 was as follows:

"Upon each emigrant agent, or employer or employee of such agents, doing business in this State, the sum of five hundred dollars for each county in which such business is conducted."

Section 4 was as follows:

"Be it further enacted by the authority aforesaid, That the taxes provided for in paragraphs 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of section 2 of this act shall be paid in full for the fiscal years for which they are levied to the tax collectors of the counties where such vocations are carried on at the time of commencing to do business specified in said paragraphs. Before any person taxed by paragraphs 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of section 2 of this act shall be authorized to carry on said business they shall go before the ordinary of the county in which they propose to do business and register their names, places of business, and at the same time pay their taxes to the tax collector; and it shall be the duty of said ordinary to immediately notify the comptroller general and the tax collector. Any person failing to register with the ordinary, or, having registered, failing to pay the tax as herein required, shall be liable to indictment for misdemeanor, and, on conviction, shall be fined not less than double the tax, or be imprisoned as prescribed by section 1039 of volume III of the Code of 1895, or both, in the discretion of the court. One-half of said fine shall be applied to the payment of the tax, and the other to the fund of fines and forfeitures for use of officers of court."

Mr. Chief Justice FULLER delivered the opinion of the Court:

Persons following the occupations named in some twenty-nine paragraphs of section 2 of the Tax Act of 1898, if they failed to register their names before the ordinary, or, having registered, failed to pay their taxes, as required by section 4, were liable to indictment for misdemeanor.

The Supreme Court of Georgia pointed out that it did not distinctly appear whether Williams was charged with having done business without registering, or without paying the tax, but considered that to be immaterial since he could not be punished for a failure to do either, if the provision imposing the tax were unconstitutional.

As preliminary to considering the validity of the provision the court, as matter of original definition, and in view of prior legislation, (Acts, 1876, p. 17; Acts, 1877, p. 120; Code, 1882, § 4598, *a*, *b*, *c*,) held that the term

"emigrant agent," as used in the General Tax Act of 1898, meant a person engaged in hiring laborers in Georgia to be employed beyond the limits of that State.

The court called attention to the fact that while previous acts had required a license, this act provided for a specific tax on the occupation of emigrant agents in common with very many other occupations, the declared purpose of the levy being for the support of the government, and ruled that the question of whether the tax was so excessive as to amount to a prohibition on the transaction of that business, did not arise, and, indeed, was not raised.

The inquiry is, then, whether a State law taxing occupations is invalid so far as applicable to the pursuit of the business of hiring persons to labor outside the State limits because in conflict with the Federal Constitution.

On behalf of plaintiff in error it is insisted that paragraph ten is in conflict with the Fourteenth Amendment because it restricts the right of the citizen to move from one State to another, and so abridges his privileges and immunities; impairs the natural right to labor; and is class legislation, discriminating arbitrarily and without reasonable basis.

Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the Fourteenth Amendment and by other provisions of the Constitution.

And so as to the right to contract. The liberty, of which the deprivation without due process of law is forbidden, "means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned; . . . although it may be conceded that this right to contract in relation to persons or property or to do business within the jurisdiction of the State may be regulated and sometimes prohibited when the contracts or business conflict with the policy of the State as contained in its statutes." *Allgeyer* v. *Louisiana*, 165 U. S. 589, 591; *Holden* v. *Hardy*, 169 U. S. 366.

But this act is a taxing act, by the second section of which taxes are levied on occupations, including, by paragraph ten, the occupation of hiring persons to labor elsewhere. If it can be said to affect the freedom of egress from the State, or the freedom of contract, it is only incidentally and remotely. The individual laborer is left free to come and go at pleasure,

and to make such contracts as he chooses, while those whose business it is to induce persons to enter into labor contracts and to change their location, though left free to contract, are subjected to taxation in respect of their business as other citizens are.

The amount of the tax imposed on occupations varies with the character of the occupation. Dealers in futures are compelled to pay one thousand dollars annually for each county in which the business is carried on; circus companies exhibiting in cities or towns of twenty thousand inhabitants or more, one thousand dollars each day of exhibition; peddlers of cooking stoves or ranges, two hundred dollars in every county in which such peddler may do business; peddlers of clocks, one hundred dollars; and so on.

The general legislative purpose is plain, and the intention to prohibit this particular business cannot properly be imputed from the amount of the tax payable by those embarked in it, even if we were at liberty on this record to go into that subject.

It would seem, moreover, that the business itself is of such nature and importance as to justify the exercise of the police power in its regulation. We are not dealing with single instances, but with a general business, and it is easy to see that if that business is not subject to regulation, the citizen may be exposed to misfortunes from which he might otherwise be legitimately protected.

Nor does it appear to us that the objection of unlawful discrimination is tenable.

The point is chiefly rested on the ground that inasmuch as the business of hiring persons to labor within the State is not subjected to a like tax, the equal protection of the laws secured by the Fourteenth Amendment is thereby denied.

In *Shepperd* v. *Commissioners*, 59 Ga. 535, approved and followed in this case, the Supreme Court of Georgia decided that the act of 1876, which required a license as preliminary to carrying on this business, was not unconstitutional on this ground, for the reason that it did not appear that hiring for internal employment had become a business in Georgia, or was pursued as such by any person or persons. And for the further reason that the State could properly discriminate in its police and fiscal legislation between occupations of similar nature but of dissimilar tendency; between those which tended to induce the laboring population to leave, and those which tended to induce that population to remain.

We are unable to say that such a discrimination, if it existed, did not rest on reasonable grounds, and was not within the discretion of the State legislature. *American Sugar Refining Company* v. *Louisiana*, 179 U. S. ——, and cases cited.

In fine, we hold that the act does not conflict with the Fourteenth Amendment in the particulars named.

Counsel for plaintiff in error further contends that the imposition of the tax cannot be sustained because in contravention of clause three of section eight, and clause five of section nine, of article one of the Constitution.

Clause five of section nine provides that "no tax or duty shall be laid on articles exported from ~~other~~ States." The facts of this case do not bring it within the purview of this prohibition upon the power of Congress, and it need not be considered as a substantive ground of objection.

The real question is, does this law amount to a regulation of commerce among the States? To answer that question in the affirmative is to hold that the emigrant agent is engaged in such commerce, and that this tax is a restriction thereon.

In *Mobile County* v. *Kimball*, 102 U. S. 702, Mr. Justice Field, delivering the opinion of the court, said: "Commerce with foreign nations and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities." Broad as is the import of the word commerce as used in the Constitution, this definition is quite comprehensive enough for our purposes here.

These agents were engaged in hiring laborers in Georgia to be employed beyond the limits of the State. Of course, transportation must eventually take place as the result of such contracts, but it does not follow that the emigrant agent was engaged in transportation or that the tax on his occupation was levied on transportation.

In *McCall* v. *California*, 136 U. S. 104, we held that the agency of a line of railroad between Chicago and New York, established in San Francisco for the purpose of inducing passengers going from San Francisco to New York to take that line at Chicago, but not engaged in selling tickets for the route, or receiving or paying out money on account of it, was an agency engaged in interstate commerce. But there the business was directly connected with interstate commerce, and consisted wholly in carrying it on. The agent was the agent of the transportation company, and he was acting solely in its interests.

So in *Norfolk & Western Railroad Company* v. *Pennsylvania*, Id. 114, it was ruled that a tax imposed by a State on a corporation engaged in the business of interstate commerce, as described, for the privilege of keeping an office in the State, was a tax on commerce among the States.

On the other hand, it was held in *Nathan* v. *Louisiana*, 8 How. 73, that a broker dealing in foreign bills of exchange was not engaged in commerce, but in supplying an instrument of commerce, and that a State tax on all money or exchange brokers was not void as to him as a regulation of commerce.

In *Paul* v. *Virginia*, 8 Wall. 168, 183, it was decided that issuing a policy of insurance was not a transaction of commerce, and it was said:

"The policies are simple contracts of indemnity against loss by fire, entered into between the corporations and the assured for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence in value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another and then put up for sale."

Again, in *Hooper* v. *California*, 155 U. S. 648, 655, it was held that a section of the penal code of California making it a misdemeanor for a person in that State to procure insurance for a resident in the State from an insurance company not incorporated under its laws, and which had not complied with its laws relative to insurance, was not a regulation of commerce. Mr. Justice White there adverts to the real distinction on which the general rule and its exceptions are based, "and which consists in the difference between interstate commerce or an instrumentality thereof on the one side and the mere incidents which may attend the carrying on of such commerce on the other. This distinction has always been carefully observed, and is clearly defined by the authorities cited. If the power to regulate interstate commerce applied to all the incidents to which said commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the States; and would exclude State control over many contracts purely domestic in their nature."

The imposition of this tax falls within the distinction stated. These labor contracts were not in themselves subjects of traffic between the States, nor was the business of hiring laborers so immediately connected with interstate transportation or interstate traffic that it could be correctly said that those who followed it were engaged in interstate commerce, or that the tax on that occupation constituted a burden on such commerce.

Nor was the imposition in violation of Section 2 of Article IV, as there was no discrimination between the citizens of other States and the citizens of Georgia.

Judgment affirmed.

Mr. Justice HARLAN dissented.

True copy.

Test:

Clerk Supreme Court, U. S.